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**Standing Committee on
Justice Policy**

Supporting Children, Youth
and Families Act, 2017

2nd Session
41st Parliament

Thursday 4 May 2017

**Comité permanent
de la justice**

Loi de 2017 sur le soutien
à l'enfance, à la jeunesse
et à la famille

2^e session
41^e législature

Jeudi 4 mai 2017

Chair: Shafiq Qadri
Clerk: Christopher Tyrell

Président : Shafiq Qadri
Greffier : Christopher Tyrell

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 4 May 2017

Jeudi 4 mai 2017

The committee met at 0900 in committee room 1.

**SUPPORTING CHILDREN, YOUTH
AND FAMILIES ACT, 2017**

**LOI DE 2017 SUR LE SOUTIEN
À L'ENFANCE, À LA JEUNESSE
ET À LA FAMILLE**

Consideration of the following bill:

Bill 89, An Act to enact the Child, Youth and Family Services Act, 2017, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts / Projet de loi 89, Loi édictant la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, modifiant et abrogeant la Loi sur les services à l'enfance et à la famille et apportant des modifications connexes à d'autres lois.

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. J'appelle à l'ordre cette séance du Comité permanent de la justice. Welcome. As you know, we're hearing clause-by-clause consideration for Bill 89, An Act to enact the Child, Youth and Family Services Act—dispense.

We're in subsection 152. Three motions are before the floor. Sense-wise, it makes it more sensible to go to motion 163. I'm not adequately caffeinated to explain the reasons right now. In any case, NDP motion 163.

Miss Monique Taylor: So, 163?

The Chair (Mr. Shafiq Qadri): Yes, 163, please.

Miss Monique Taylor: I had us at 161. Okay.

Mrs. Gila Martow: We're doing 163 and then we have to go back to 161.

Miss Monique Taylor: Okay. My apologies; thank you. Coffee was a priority, Chair.

I move that the definition of “contraband” in subsection 152(3) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding “and” at the end of clause (b) and by striking out clause (c).

This has to do with the previous motion that would have been before us under 162, when it comes to contraband for young people, so I'm kind of confused now when we have jumped ahead of 162. We'll just go ahead; I don't know.

The Chair (Mr. Shafiq Qadri): The reason, I believe, is that if we consider and pass 161 now, it automatically nullifies, kills, murders 162 and 163—

Miss Monique Taylor: I see.

The Chair (Mr. Shafiq Qadri): —for which purpose, you are now allowing a more fulsome debate, in the words of my esteemed Clerk. So we now have 163 before the floor.

Miss Monique Taylor: Okay. Then if I may, Chair, I'll speak to the previous motion, which will be under 162 because 163 relates to it, so I'll refer back to it.

Something as simple as pencils can be considered contraband. If you're only allowed to have two pencils and you have five, they could take all of the pencils, right? This was something that PACY had asked for. There needs to be something to be looking at this instead of just rules that are so across the line—that would deal with an issue that could be very meagre in the scheme of things. I'll just leave it at that.

The Chair (Mr. Shafiq Qadri): Comments on 163? Ms. Martow?

Mrs. Gila Martow: I think that there are problems, kind of, with the way both are written, because I agree that if you're allowed to have it, that you just have something beyond the purpose of what you're supposed to have versus beyond the use of what you're supposed to have—I have a feeling that there could be times where a young person is in a foster home or, more specifically, in a group home, and maybe they're looking to make some cash by selling something that's in the place that they're allowed to use. Who knows what it is?—shampoo or—I have no idea what it could be that they could possibly want to sell from the place. But I have a feeling that maybe they've been having problems. I don't recall anybody coming on behalf of the workers or the homes that the youth are in and stating that there are issues with people using stuff not for the purpose that they are supposed to use it.

I can certainly see how the youth feel that this feels more like some kind of detention centre with this type of language, but I think that we do want to ensure that they're able to take away something that the children shouldn't have. I'm worried that by changing it to this language, that might make that very difficult for the workers.

The Chair (Mr. Shafiq Qadri): Miss Taylor?

Miss Monique Taylor: Just for clarification, Chair, this is about quantity. They're allowed to have something—like I said, my example was pencils. They're allowed to have two pencils but they have five, so they

lose all five pencils in the matter, is the way it has been, to my understanding. It's about quantity of something that they're actually allowed to have. That's why we thought, "Why would you take them all?"

First of all, you're right; this isn't a correctional facility. Or is it a correctional facility? Who knows at this point? It's just about quantity.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: I guess I would leave it up to the government to maybe try to explain what they are trying to accomplish with their version of this section, the (c) part of 152(3). What were they trying to achieve with section (c)? Then we would know what the problem was.

The Chair (Mr. Shafiq Qaadri): Ms. Kiwala.

Ms. Sophie Kiwala: We are recommending to oppose this motion because the previous motion to amend, which was motion 161, removed the clause in its entirety.

The Chair (Mr. Shafiq Qaadri): Fine. So we'll proceed to the vote, then. Those in favour of NDP motion 163? Those opposed? Motion 163 falls.

Now government motion 161.

Ms. Sophie Kiwala: I move that the definition of "contraband" in subsection 152(3) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding "and" at the end of clause (b) and by striking out clause (c).

This amendment removes anything a young person is authorized to have, but in a quantity in which they are not authorized to have it, from the definition of contraband for the purposes of any contraband found during a search.

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

Mrs. Gila Martow: Is it possible for the government to give us an example of what a child or youth could have in their possession in a large quantity that creates such a problem that we have to spell it out in an act?

The Chair (Mr. Shafiq Qaadri): Ms. Kiwala.

Ms. Sophie Kiwala: I'm just going to elaborate a little bit on the rationale. The amendment addresses the unintended consequences of a provision that is perceived by stakeholders, including the Provincial Advocate for Children and Youth, to be too broad. For example, excess quantities of otherwise allotted items, such as clothing or bedding for warmth, should not be treated as contraband. The definition is too broad.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, if that's okay? So proceeding to the vote. Those in favour of government motion 161? Those opposed? Government motion 161 carries.

NDP motion 162.

Miss Monique Taylor: I believe I can withdraw.

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

Shall section 152, as amended, carry? Carried.

Shall section 153 carry? Carried.

Government motion 164.

Ms. Sophie Kiwala: I move that the definition of "secure de-escalation room" in section 154 of the Child, Youth and Family Services Act, 2016, as set out in

schedule 1 to the bill, be amended by striking out "secure de-escalation of situations and behaviour" and substituting "de-escalation of situations and behaviour".

Basically, the amendment clarifies the distinction between a place, "secure de-escalation room," and an activity, "de-escalation of situations and behaviour."

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 164? Those opposed? Motion 164 carries.

Shall section 154, as amended, carry? Carried.

May I take it as the will of the committee to consider the next 11 sections en bloc—that is, sections 155 to 165, inclusive? If we're agreeable, then we'll move to consider. Shall sections 155 up to and including 165—that's 155 to 165—carry? Carried.

We'll now move to NDP motion 165. Miss Taylor.

Miss Monique Taylor: I move that paragraph 1 of subsection 166(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out "where the child is 12 or older" at the end.

This is a recommendation of the Provincial Advocate for Children and Youth. We know that children come in many shapes, forms, sizes and abilities, and just putting an age on a child doesn't necessarily say they don't have the ability to be able to speak for themselves and have a say. We think taking that part out is important.

0910

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 165? If there are none, we'll proceed to the vote. Those in favour of NDP motion 165? Those opposed? NDP motion 165 falls.

Shall section 166 carry? Carried.

Shall section 167 carry? Carried.

Government motion 166.

Ms. Sophie Kiwala: I move that subparagraph 1 iii of subsection 168(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"iii. a child protection worker who brought the child to a place of safety under section 80, or"

This amendment replaces "apprehended the child" with "brought the child to a place of safety."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 166? Ms. Martow.

Mrs. Gila Martow: I'll make a quick comment since I haven't made this comment yet today. The preamble and all the consultations before this bill that we were going to take away criminal terminology like "apprehended"—and it's sort of surprising how much work it is now to fix it. Obviously, it's also important for the fact that we're trying to get some of the victims of human trafficking off the streets, and when you're using words like "apprehended," the term should be for the people trafficking them, not the victims. Obviously we're going to support this.

The Chair (Mr. Shafiq Qaadri): Comments on government motion 166? We'll proceed to the vote, then.

Those in favour of government motion 166? Those opposed? Motion 166 carries.

Government motion 167.

Ms. Sophie Kiwala: I move that subsection 168(7) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Mandatory advice

“(7) The Provincial Advocate for Children and Youth shall ensure that as soon as possible after the notice is received a person who is not employed to provide services in the secure treatment program explains to the child the child’s right to a review in language suitable to the child’s understanding.”

The amendment changes “secure treatment facility” to “secure treatment program” and changes “in language suitable to the child’s level of understanding” to “in language suitable to the child’s understanding.”

Sorry, going back—I’m going to review that.

This amendment changes “secure treatment facility” to “secure treatment program” and changes “in language suitable to the children’s level of understanding” to “in language suitable to the child’s understanding.”

The Chair (Mr. Shafiq Qadri): Fair enough. Thank you, Ms. Kiwala. Are there comments on the understanding or anything else in government motion 167?

Ms. Sophie Kiwala: It’s about consistency.

The Chair (Mr. Shafiq Qadri): Mr. McDonell?

Mr. Jim McDonell: So you’re looking at—I’m just going to read this—somebody who’s not employed to be responsible. I’m just wondering who’s going to do it.

The Chair (Mr. Shafiq Qadri): Sorry. What is the question?

Mr. Jim McDonell: It’s set up so the person providing the information is not employed by the institution. I’m just wondering who is going to do it.

Ms. Sophie Kiwala: Sorry, I can’t hear.

Mr. Jim McDonell: If a person is not employed—

Mrs. Gila Martow: She can’t hear you.

Mr. Jim McDonell: It says that the person is not employed will be providing the service. I’m just wondering: Who is the person who’s going to be providing the information? Employed by the agency who is—

Ms. Sophie Kiwala: Just a second.

Mr. Jim McDonell: It seems to be—you have to have somebody provide the service, but they can’t be employed by the agency.

The Chair (Mr. Shafiq Qadri): Colleagues from—

Ms. Sophie Kiwala: I’m going to ask the staff to elaborate.

The Chair (Mr. Shafiq Qadri): Officials?

M^{me} Nathalie Des Rosiers: Sorry, I read the French version, and I understand better.

Le Président (M. Shafiq Qadri): C’est plus compréhensible en français.

M^{me} Nathalie Des Rosiers: Pour moi.

You cannot have the people from the secure facility give the explanation. What you want is somebody externally to provide the advice on rights. Otherwise, the

person from the secure facility is in a position of power and doesn’t have the level of independence that is required here. That’s the purpose of this.

Mr. Jim McDonell: Yes, I see, but who would that be? Could it be anybody?

M^{me} Nathalie Des Rosiers: It could be a lawyer. It could be a child’s lawyer. It could be a child’s advocate, someone from the child advocate’s office. I misunderstood your question.

The Chair (Mr. Shafiq Qadri): Are there further comments forthcoming?

Interjection.

The Chair (Mr. Shafiq Qadri): Not from there; not from the corridor, please. Come and have a seat.

Ms. Judy Switson: My apologies. The only thing we’d like to add is—

The Chair (Mr. Shafiq Qadri): We need you to introduce yourself and your branch. You are in a formal setting and you are being recorded, I respectfully remind you. Please proceed.

Ms. Judy Switson: Thank you. Judy Switson, client services branch director, MCYS.

The Provincial Advocate for Children and Youth should ensure that as soon as possible after the notice is received, a person who is not employed by the secure treatment facility explains to the child the child’s right to review, in language suitable for the child’s level of understanding.

The Chair (Mr. Shafiq Qadri): Thank you. Are there any further issues on government motion 167? Thank you, colleagues. We’ll now proceed to the vote. Those in favour of government motion 167? Those opposed? Motion 167 carries.

Shall section 168, as amended, carry? Carried.

Shall section 169 carry? Carried.

We’re now proceeding to government motion 168. Ms. Kiwala.

Ms. Sophie Kiwala: I move that subsection 170(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out “secure”.

The amendment clarifies the distinction between “place,” “secure de-escalation room” and “activity de-escalation” of situations and behaviour.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 168? If none, we’ll proceed to the vote. Those in favour of government motion 168? Those opposed? Government motion 168 carries.

Shall section 170, as amended, carry? Carried.

PC motion 168.1: Mr. McDonell.

Mr. Jim McDonell: I move that section 171 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Absolute limit, 24 hours

“(4.1) A child or young person who is placed in a secure de-escalation room for longer than one hour with the approval of the person in charge of the premises shall

in no circumstances be kept in the room for longer than 24 consecutive hours.”

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Martow.

Mrs. Gila Martow: I think we discussed this a little bit during previous meetings. Basically, in 2015, the advocate’s office carried out a complete review of the use of solitary confinement on children and youth in our youth justice facilities. Right now, a young person over the age of 16 can be placed in solitary confinement for up to 72 hours.

I think it was the member from the NDP who said that solitary confinement shouldn’t be used because they’re short of workers and it’s a long weekend. It’s not because of what the child’s behaviour or safety issue is, but it just becomes a useful tool for not having the right amount of staff on hand.

I don’t believe it was mentioned before that the practice goes against international calls to ban the use of solitary confinement on young people for periods of time longer than 24 hours. Peer-reviewed medical research found that the practice is very harmful to young people. That’s why we think that there should be an absolute limit of 24 hours. I think that 24 hours is long enough in the province of Ontario to get the staff on hand to deal with it.

0920

The Chair (Mr. Shafiq Qaadri): Further comments on 168.1? Mr. McDonell.

Mr. Jim McDonell: Yes, I think what it really does is it places an onus, before a child is apprehended, to make sure that, first of all, if you’re unable to house them properly, that, unless it’s critical or very important that it be done at that time, some thought has to be put into what’s going to happen over the next 72 hours, if it’s a long weekend or just a weekend or a holiday, and that you just can’t throw somebody in. Maybe you have to plan your week a little better. You have to look at the situation uniquely and say, “I think we don’t have to move now; we can wait, because we haven’t got the proper facilities.”

It’s a matter of, “Let’s go in here. We know that there are certain restrictions here. Where is the child best off?” And putting them in solitary confinement for more than one day is probably the last resort.

The Chair (Mr. Shafiq Qaadri): Further comments on 168.1? If none, we’ll proceed to the vote. Those in favour of PC motion 168.1? Those opposed? PC motion 168.1 falls.

Government motion 169.

Ms. Sophie Kiwala: I move that subsection 171(9) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Exception

“(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is 16 or older and who is held in a place of secure custody or of secure temporary detention, but a service

provider shall comply with the following standards and procedures and with any additional standards and procedures that may be prescribed:

“1. The young person must be observed every 15 minutes by a responsible person and these observations may be recorded in the young person’s case record.

“2. The service provider must determine whether, given the needs of the young person, the young person should be observed at regular intervals that are more frequent than every 15 minutes, and, if that determination is made, the young person must be observed by a responsible person at the more frequent intervals determined by the service provider and these observations may be recorded in the young person’s case record.

“3. The young person must not be kept in a secure de-escalation room for a continuous period in excess of 24 hours or for a period or periods that exceed an aggregate of 24 hours in a seven-day period.

“4. Despite paragraph 3, the service provider may extend a young person’s placement in a secure de-escalation room for a continuous period beyond 24 hours or for an aggregate of more than 24 hours in any given seven-day period, if the provincial director approves the extension.

“5. The provincial director may approve the extension of the placement of a young person in a secure de-escalation room beyond 24 continuous hours or beyond an aggregate of 24 hours in a given seven-day period if the provincial director has reasonable and probable grounds to believe that the young person’s continued placement in a secure de-escalation room is necessary for the safety of staff or young persons in the facility.”

Basically, the amendment sets out rules for youth 16 and older who are held—

The Chair (Mr. Shafiq Qaadri): Sorry, Ms. Kiwala. May I just, without having to explain why—can you just read starting from number 1? Just number 1 again.

Ms. Sophie Kiwala: “1. The young person must be observed every 15 minutes by a responsible person and these observations must be recorded in the young person’s case record.”

Mrs. Gila Martow: I think you said “may” instead of “must.”

The Chair (Mr. Shafiq Qaadri): Yes, I think there’s a “may” and “must” issue happening. I’m going to ask you, actually, with respect—I’m just wondering if your edition is different.

Ms. Sophie Kiwala: So you have “may”?

The Chair (Mr. Shafiq Qaadri): We have “must.”

Ms. Sophie Kiwala: You have “must.” Sorry. I have “must” too.

The Chair (Mr. Shafiq Qaadri): Okay. So you must read “must.”

Ms. Sophie Kiwala: I must read “must.” Okay. Got it.

The Chair (Mr. Shafiq Qaadri): Again in number 1 and in number 2. We’ll be monitoring closely. Go ahead.

Ms. Sophie Kiwala: “1. The young person must be observed every 15 minutes by a responsible person and

these observations must be recorded in the young person's case record."

The Chair (Mr. Shafiq Qaadri): And read number 2 again. It's in the very last line. We'll be waiting for your "must."

Ms. Sophie Kiwala: The entirety of number 2?

The Chair (Mr. Shafiq Qaadri): I believe it's the politeness of Kingston and the Islands that's going here.

Ms. Sophie Kiwala: No, waking up with a migraine is what it actually is. Anyway, "2. The service provider must determine whether, given the needs of the young person, the young person should be observed at regular intervals that are more frequent than every 15 minutes, and, if that determination is made, the young person must be observed by a responsible person at the more frequent intervals determined by the service provider and these observations must be recorded in the young person's case record."

The Chair (Mr. Shafiq Qaadri): I would certainly invite other government colleagues to step up to the plate here.

Ms. Sophie Kiwala: Okay, and in point 4, "24 hours in a given seven-day period...."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kiwala. Comments on government motion 169?

Ms. Sophie Kiwala: The amendment sets out rules for youth 16 and older who are held in a place of secure custody or secure temporary detention pertaining to secure de-escalation placements over 24 hours. The rules include regular observation and recording of observation, possibility for more frequent observation, a maximum of 24 hours for a continuous period or an aggregate of 24 hours in a seven-day period with an exception only with provincial director approval and the criteria for that approval.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 169? All right. We must now proceed to the vote. Those in favour of government motion 169? Those opposed? Government motion 169 carries.

NDP motion 170.

Miss Monique Taylor: I'll withdraw.

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

Shall section 171, as amended, carry? Carried.

We now proceed to NDP motion 171. Miss Taylor.

Miss Monique Taylor: I move that clauses 172(a) and (b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"(a) the need for the secure de-escalation room;

"(b) every instance of the use of the secure de-escalation room; and

"(c) the prescribed matters,"

This amendment actually adds the (b) portion to ensure that it adds to the written reports that every time the secure de-escalation room is used, it has to be written in the report. So a report has to be written every single time. That's the amendment here.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 171? If not, we'll proceed to the vote. Those in favour of NDP motion 171? Those opposed? NDP motion 171 falls.

NDP motion 172: Miss Taylor.

Miss Monique Taylor: I move that section 172 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Content of report

"(2) The written report required under subsection (1) shall include,

"(a) a record for each instance when a child or young person was placed in a secure de-escalation room, which includes,

"(i) the name and age of the child or young person,

"(ii) the dates and the duration of the use of the secure de-escalation room, and

"(iii) the grounds on which the service provider determined that the criteria set out in subsection 171(3) were met; and

"(b) a report of any instance in which the use of a secure de-escalation room did not comply with the requirements of this act, the regulations or any applicable policies."

This is just rules around what's in the report that should be written for de-escalation. This is a recommendation of the provincial advocate. We know that we have a lack of data and information about our children, quite frankly. When they're in facilities such as this, proper notes and documentation should be taken. This is clarification of what should be written.

0930

The Chair (Mr. Shafiq Qaadri): Further comments on the NDP motion? Ms. Kiwala.

Ms. Sophie Kiwala: The existing CFSA provisions with respect to providing written reports to the director have been maintained. This includes the authority for the ministry to establish additional reporting requirements. Reporting requirements will be considered when developing regulations and will be included in the ministry's policy direction to service providers.

The Chair (Mr. Shafiq Qaadri): Further comments? If none, we'll proceed, then, to the vote. Those in favour of NDP motion 172? Those opposed? NDP motion 172 falls.

Shall section 172 carry? Carried.

We now proceed to NDP motion 173. Miss Taylor.

Miss Monique Taylor: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section:

"Review Teams

"Review team

"172.1(1) A service provider who is approved under subsection (6) shall establish an interdisciplinary review team with the duty of reviewing and approving or refusing the proposed use of intrusive procedures.

"Same

"(2) A review team shall consist of,

“(a) persons employed by the service provider; and

“(b) one person who is not employed by the service provider and is approved by the minister,

“and may also include a legally qualified medical practitioner.

“Panel

“(3) Any three members of a review team may review and approve or refuse the proposed use of an intrusive procedure.

“Report to service provider

“(4) A review team shall make a report to the service provider concerning every review conducted under subsection (3).

“Report to minister

“(5) A review team shall make reports of its activities to the minister at the prescribed intervals.

“Approval by minister

“(6) The minister may approve a service provider for the use of the intrusive procedures specified in the approval and may set out in the approval any conditions and limitations to which it is subject.

“Revocation, etc., of approval

“(7) The minister may at any time revoke, suspend or amend an approval given under subsection (6) and shall give the affected service provider notice, with reasons, of the minister’s decision.”

This is a recommendation of the provincial advocate. It was in the provincial Child and Family Services Act, and we did not find it within the new act. I think that it’s important that we have those teams available.

The Chair (Mr. Shafiq Qadri): Further comments on NDP motion 173? If there are none, we will proceed, then, to the vote. Those in favour of NDP motion 173? Those opposed? NDP motion 173 falls.

Shall section 173 carry? Carried.

We’ll now proceed to the next section: both section 174 and NDP motion 174. Miss Taylor.

Miss Monique Taylor: I move that subsection 174(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking “may” in the portion before clause (a) and substituting “shall”.

Again, as we heard previously, the government likes to use the word “may.” We think that ensuring that there’s proper direction that the minister has to do things—especially when it comes to a professional advisory board, we think it’s important that there are concrete instructions, and not just whether they feel like it or not.

The Chair (Mr. Shafiq Qadri): Ms. Martow?

Mrs. Gila Martow: What I would say is that perhaps the government can explain why they think it should be “may” and not “shall.” If they feel it’s important enough to have this advisory board that they want to even write about in the act, then obviously it’s important. So, if it’s important, why should it be a “may” instead of “shall”?

The Chair (Mr. Shafiq Qadri): Any further comments or replies on this question before the floor?

M^{me} Nathalie Des Rosiers: I think it’s a good convention to put in “may” in general when you set up

because you may want to have the flexibility of having a different body or a different possibility. Certainly I think the intention is to have that body, but you always want to have—it’s good legislative drafting to put in “may” because it protects you if you have some delays in the way in which the professional body is being appointed, for example. It’s a bit of a convention in the way it’s driven.

The Chair (Mr. Shafiq Qadri): Miss Taylor.

Miss Monique Taylor: Good intentions don’t always get us anywhere. It’s unfortunate. We know that if we’re going to have a professional advisory board, they should establish the board and there shouldn’t be room for error or wiggle room. We know that we have a lack of oversight within our system as we currently sit. That’s part of the reason why this bill is before us, because of the serious issues that have been happening within our services. So not to have teeth behind the legislation that we’re bringing forward is, once again, another shell game.

The Chair (Mr. Shafiq Qadri): Further comments on—Mr. Potts?

Mr. Arthur Potts: I just want to say that I agree with the past dean of a prestigious law school. That’s it.

The Chair (Mr. Shafiq Qadri): Thank you for your endorsement, Mr. Potts. Any further comments on NDP—Mr. McDonell?

Mr. Jim McDonell: I guess after we have been seeing all these high-priced government appointments getting paid, we just don’t really want to see a board appointed but never actually do anything, as we see many, many times.

The Chair (Mr. Shafiq Qadri): Ms. Martow and then Miss Taylor.

Mrs. Gila Martow: I think that if the government felt they needed wiggle room, they could have put an addendum to this, saying that they shall have the board, unless in certain situations where it’s not possible, and maybe outline those situations, because I think what we’re seeing now with fentanyl on our streets and all these opioid overdoses is that it’s not going to get easier.

This child welfare oversight is certainly not going to get easier. That would be the only reason why I would think the government would want to have the wiggle room, that all of a sudden we’re not going to need the board because we’re not going to have any more children and youth in care and we’re not going to have any more drugs on the streets. We’re just going to be living in that utopia. Obviously that is not going to be the case. Things are only going to get more difficult, not easier. I’m trying to imagine why we would need the wiggle room of not having an advisory board.

This isn’t something like a mining expedition where the mine gets closed and so we don’t need the oversight anymore. This is child welfare. We’re always going to need oversight. There are always going to be issues. I’m just trying to think up scenarios. So maybe if the government can explain why it needs to be “may,” what scenarios they wouldn’t need this advisory board for or couldn’t have this advisory board.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 174? If not, we'll proceed then to the vote. Those in favour of NDP motion 174? Those opposed? NDP motion 174 falls.

Shall section 174 carry? Carried.

Shall section 175 carry? Carried.

Government motion 175.

0940

Ms. Sophie Kiwala: I move that subsections 176(2) and (3) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Best interests of child

“(2) Where a person is directed in this part to make an order or determination in the best interests of a child, the person shall,

“(a) consider the child’s views and wishes, given due weight in accordance with the child’s age and maturity, unless they cannot be ascertained;

“(b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child’s cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and

“(c) consider any other circumstance of the case that the person considers relevant, including,

“(i) the child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,

“(ii) the child’s physical, mental and emotional level of development,

“(iii) the child’s race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,

“(iv) the child’s cultural and linguistic heritage,

“(v) the importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family,

“(vi) the child’s relationships and emotional ties to a parent, sibling, relative, other member of the child’s extended family or member of the child’s community,

“(vii) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity, and

“(viii) the effects on the child of delay in the disposition of the case.”

This amendment modifies the factors in the best-interest test to be considered when making an order or a determination in the best interest of a child under part VII, which is the adoption and adoption licensing part of the act. The test is modified by requiring that the voice of the child or youth must be considered and be given due weight in accordance with their age and maturity. Previously, the clause made this consideration discretionary.

The amendment also moves the mandatory considerations for First Nations, Inuit and Métis children to be second on the list of considerations in the test so as to make clear their importance and mandatory nature.

The Chair (Mr. Shafiq Qaadri): Miss Taylor and then Ms. Martow.

Miss Monique Taylor: We heard from the African Canadian groups when they came before us that they felt they should have been included further in the bill. This would have been an opportunity where we could have highlighted some of their needs. We know that they are overrepresented when it comes to any of the services that are provided for vulnerable families. I think it’s unfortunate that they weren’t included in this, because we know that they’re in crisis, many of those families. By not highlighting them in this bill, it really doesn’t do anything to correct the problems that are before us and the concerns they brought to this table.

Also, “creed”: We previously had creed/religion, so I’m not seeing that reflected in this test.

I am happy to see a means test put in the bill. We did hear very clearly from UNICEF that we needed to have the means test there. But I think it could have been a little bit better, reflecting, like I said, the African Canadian community as well as the religion piece, because we know that that is an outcry from parents. We really don’t need to be poking bears unnecessarily.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: I was actually going to ask the government why it didn’t say “creed and religion” in this section when we had already made the changes to have it in previous sections.

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

Mr. Arthur Potts: We made the change in the definition of “creed” to make it very clear it included religion, even though we didn’t think it was necessary because “creed” and all the jurisprudence around creed under the Human Rights Code indicates it covers religion.

The Chair (Mr. Shafiq Qaadri): Miss Taylor.

Miss Monique Taylor: We didn’t change the definition of “creed.” What we did was we added “creed”—and it was “and/or religion” or “/religion”—it was something along that line. It’s very clear in the amendments that that’s what we did. We didn’t change that. We know that the definition of “creed” includes religion. That’s something, unfortunately, that you, Mr. Potts, did not do. It’s something that we clarified in an earlier amendment, to say “creed”—and I don’t remember the exact wording, whether it was “/religion” or what it was—having consistency throughout the bill. That’s the problem.

We are now creating this legislation through amendments, and how many mistakes are there going to be for the lack of consistency throughout this bill? It shows how quickly things were thrown together and what a rushed process this has been.

I’ve heard from several stakeholders who do not spend a lot of time at Queen’s Park. They don’t live in this bubble of legislation and how the process works and how we get to legislation. This whole process has been so rushed that people can’t catch up. We have people who would have brought forward amendments but they had no idea how to do that, so they brought deputations here. Their amendments were not reflected because we had all

of those deputations, and amendments had to be in just days later. So they fell through the cracks in the process.

Saying that we're getting this bill right is really unfortunate, because time after time as we sit at this table, as we go through these amendments, errors and flaws that we're coming across are just more and more frequent. This, again, is another one of those situations.

The Chair (Mr. Shafiq Qaadri): The PCs, and then from the ministry, or as you wish.

Mrs. Gila Martow: Okay. I'm glad that somebody is going to clarify it, but my question is: Why doesn't this section say the word "religion"? Is there a reason for that, or was it an oversight?

Maybe, since we have somebody here who can explain to me, since I'm guessing we're going to spend about 15 hours or 20 hours—how many hours are we going to spend doing clause-by-clause? Would it have been more efficient for the government, once they realized they had over 200 amendments, which I think probably deserves a prize at this point—would it have been more efficient to just scrap the bill, rewrite it and have the six hours of debate? Would it have been more efficient to go through it that way—that's what I'm sitting here wondering—than to sit here rewriting the bill in clause-by-clause?

I'm not a lawyer, and I certainly wasn't the dean of a law school—thank God, for those students—but I'm wondering why clause-by-clause is two pages—this is two pages of changes just for this one amendment. I was under the understanding that clause-by-clause would be to tweak the bill to catch those little things. It's a great system we have, actually, but I'll leave it at that.

If we can get an explanation of why here it says "creed" without the word "religion."

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

Mr. Jim McDonell: I know that the official definition of "creed" includes religion, but I think we saw so many people come to the group and ask for that. I think the government realized it earlier and changed it, and the consistency just seems to be there. The old adage is "poking the bear," but it seems to make the public—the public that we're serving appreciates that change and the differences put in.

I do question the 200 amendments. It is, basically, unprecedented. You're getting almost to the point being passed—just to withdraw it and put it back in.

The Chair (Mr. Shafiq Qaadri): Ms. Martow?

Mrs. Gila Martow: If I could just add that my understanding was that creed is the religion that you self-identify with. We can't ask an infant or a young child what religion they identify with.

But as I said in a previous clause-by-clause, I think it's quite clear that we want to ensure that children are placed according to their religion as well as their creed. We're waiting for that explanation.

0950

The Chair (Mr. Shafiq Qaadri): To our colleague.

Ms. Estée Garfin: Estée Garfin, counsel with the ministry.

Motion 10 that was carried earlier in the clause-by-clause hearings included an amendment to section 2, subsection (1), which is the definition section that applies throughout the act, so that each time "creed" is read, it is read to include "religion."

The Chair (Mr. Shafiq Qaadri): Are there any further comments before we proceed to government motion 175? Ms. Martow.

Mrs. Gila Martow: What amendment was that? Amendment 10?

Interjection: Ten.

Mrs. Gila Martow: If we could just look at that one more time for a second. The definition of "creed"—

Interjection.

Mrs. Gila Martow: Yes, sorry. I can see that that was put in to include "religion" in "creed," but it still doesn't explain why we couldn't have the word "religion" in this part—even though we passed the previous motion—just to have the clarity. I just want to make that comment, because what happens, as we know, is that people take one page out of the bill and they start an email chain and it just upsets people.

My question is, to go back to the government, what harm would it have caused? I'm thinking of the song from Fiddler on the Roof: Would it have spoiled some vast, eternal plan if the word "religion" would have been in this section? What problem would it have created if the word "religion" were in this section? Yes, we said that religion will be considered whenever the word "creed" is seen in the bill, but why couldn't we just have that one little word here? It's two pages. Was it oversight, or is there a legal—maybe we'll ask the former dean of the law school. Is there a legal problem to have the word "religion" in there?

The Chair (Mr. Shafiq Qaadri): If there are no further comments—or are there?—on government motion 175, we'll then proceed to the vote. Those in favour of government motion 175? Those opposed? Government motion 175 carries.

Shall section 176, as amended, carry? Carried.

May I consider the next 15 sections en bloc? Those are sections 177 to 190—actually, I believe that's 14 sections—en bloc. Once again, those are sections 177 to 190. Shall those carry? Carried.

We'll now consider NDP motion 176. Miss Taylor.

Miss Monique Taylor: I'm going to withdraw 176, 177, 178, 179—is it okay if I do it this way?—180, 181, 182, 183, 184, 185, 186: all withdrawn.

Mr. Shafiq Qaadri: Thank you, Miss Taylor. If there are any other colleagues who would like to follow suit, that's certainly welcome.

Miss Monique Taylor: I'm a team player.

The Chair (Mr. Shafiq Qaadri): We certainly appreciate that.

Once again, several amendments—I think about nine or 10—have been withdrawn. For this now, section 191, NDP motions 176 and 177 have been withdrawn, so there are no amendments or motions before that section. Therefore, shall section 191 carry? Carried.

Shall section 192 carry? Carried.

Shall section 193 carry? Carried.

Shall 194 carry? Carried.

Shall 195 carry? Carried.

May I consider, therefore, now, seven sections en bloc? Those are sections 196 up to and including 202. Shall they carry? Carried.

NDP motion 185 has been withdrawn. We're now on section 203. NDP motion 185 has been withdrawn. Therefore, shall section 203 carry? Carried.

I think we are now onto NDP motion—

Interjection.

The Chair (Mr. Shafiq Qadri): Motion 186 is also withdrawn.

Therefore, shall section 204 carry? Carried.

We now have 27 sections to consider en bloc, if that's agreeable.

The Clerk of the Committee (Mr. Christopher Tyrell): It's 22.

The Chair (Mr. Shafiq Qadri): Correct. It's 22 sections, therefore meaning sections 205 to section 226 en bloc. Once again, 205 to 226, which is 22 sections en bloc. Shall they carry? Carried.

We are now on government motion 187 in section 227. Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: I move that section 227 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Conditions of licence

“227(1) On issuing or renewing a licence or at any other time, a director may impose on the licence the conditions that the director considers appropriate.

“Amending conditions

“(2) A director may, at any time, amend the conditions imposed on the licence.

“Notice

“(3) The director shall notify the licensee in writing of the imposition or amendment of the conditions.

“Contents of notice

“(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the tribunal if they request one in accordance with subsection 231(1).

“Conditions take effect upon notice

“(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the tribunal.

“Licensee must comply

“(6) Every licensee shall comply with the conditions to which the licence is subject.”

The Chair (Mr. Shafiq Qadri): Commentaires? Questions?

M^{me} Nathalie Des Rosiers: This amendment clarifies that a director may impose conditions on issuing and renewing a licence. At any time, they can amend the conditions. Certainly it provides due process for the

licensee, who can appeal to the Licence Appeal Tribunal if they are dissatisfied.

The Chair (Mr. Shafiq Qadri): Comments? Ms. Martow.

Mrs. Gila Martow: I guess my question is: Why wasn't this in the original bill? Was this something that the government had to hear from the presenters in deputations to realize that they had omitted this? That's what I just find so peculiar. I would have expected that amendments would be that it needs tweaking, or that somebody came and gave a presentation and said that the bill is missing something, and that's why it's such a great system. I'm just wondering why this wasn't in the original bill.

M^{me} Nathalie Des Rosiers: I think the amendments strengthen the powers of the director in a way, and that's a good thing.

The Chair (Mr. Shafiq Qadri): Any further comments before we proceed to the vote on government motion 187? We'll proceed to the vote. Those in favour of government motion 187? Those opposed? Government motion 187 carries.

Shall section 227, as amended, carry? Carried.

May I consider the next 12 sections en bloc—that is, section 228 up to and including section 239? Yes. Shall sections 228 to 239 carry? Carried.

We'll now consider government motion 188.

M^{me} Nathalie Des Rosiers: I move that the definition of “placing agency” in section 240 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out “a society or other corporation” and substituting “a person or entity, including a society”.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 188?

M^{me} Nathalie Des Rosiers: This just expands the definition of “placing agency” so that there is a broader spectrum of entities that can be included.

1000

The Chair (Mr. Shafiq Qadri): Comments? Mrs. Martow.

Mrs. Gila Martow: I think we heard from many of the presenters from indigenous communities, First Nation communities—we even had a few chiefs who presented to us.

There is definitely a movement afoot with support from, I think, all sides of the House to have more within-the-community child welfare systems. I believe that it was indigenous communities who actually brought up the point—or somebody brought up the point—that it's not always going to be a society or a big corporation, and that we need to allow for individuals to be overseeing things.

We've had these changes before. Again, not to torture the people who are here—I know everyone is hard-working from the government side and from the ministry. But again, we kept hearing that these communities were consulted. I just wonder why we're having to make these changes when there was so much consultation. Obvious-

ly, the message didn't get through, but at least we're fixing it here now today.

The Chair (Mr. Shafiq Qaadri): Government motion 188: questions, comments? If not, we'll proceed to the vote. Those in favour of government motion 188? Those opposed? Government motion 188 carries.

Shall section 240, as amended, carry? Carried.

I'll consider the next nine sections—that's 241 to 249, inclusive. Sections 241 to 249: Do they carry? Carried.

We'll now proceed to NDP motion 189: Miss Taylor.

Miss Monique Taylor: I move that subsection 250(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out "may" in the portion before clause (a) and substituting "shall".

This is an accountability measure, Mr. Chair. Ensuring that information is public is crucial. I don't think there should be room for the minister to decide whether or not to do it, but this should insist that the minister does publicize information.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: So we're back to the "mays" and the "shalls." What I would ask the government or the ministry is, in what situations shouldn't the minister publish information? This is just relicensing, I understand. It's not just to publish information where there are privacy concerns or things like that, I don't think.

I'm wondering, what situations would the minister not want to publish—that's in the best interests of the public. If that made sense, then I can understand why we would want the "may" instead of the "shall."

But barring any explanation, I just don't understand why we would give that discretionary power when we do want to have greater accountability, transparency and oversight.

The Chair (Mr. Shafiq Qaadri): Further comments to NDP motion 189? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 189? Those opposed? NDP motion 189 falls.

Shall section 250 carry? Carried.

I shall consider the five sections en bloc—that is, sections 251 to 255. Sections 251 to 255: Shall they carry? Carried.

Government motion 190: Madame Vernile.

Ms. Daiene Vernile: I move that subsection 256(2) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"Changing maximum number

"(2) A director may at any time, but with notice to the licensee that is reasonable in the circumstances, change the maximum number of children set out in the licence."

This is an amendment that allows a director to respond to circumstances, Chair.

The Chair (Mr. Shafiq Qaadri): Mille grazie, Signora Vernile. Is there any further comment? Madame Martow.

Mrs. Gila Martow: My understanding is that the only change here is that the director has to give notice to the

licensee if they're making any changes to the number of children allowed. I can't imagine why they wouldn't be giving notice, but I guess you would have to spell it out in law, make it clear that they have to give notice. I can't imagine how a director could forget the "mays" and the "shalls," how a director could change the number of children allowed and not let the licensee know. It just seems so preposterous.

I'm assuming this is just to ensure that notice is given, but it seems awfully redundant.

The Chair (Mr. Shafiq Qaadri): Further comments? If not, we'll proceed, then, to the vote. Those in favour of government motion 190? Those opposed? Government motion 190 carries.

Shall section 256, as amended, carry? Carried.

We'll consider now the next seven sections en bloc. I believe that's sections 257 to 263, inclusive. That's 257 to 263. Shall they carry? Carried.

Government motion 191: Madame Vernile.

Ms. Daiene Vernile: I move that subsection 264(3) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"Minister entitled to be heard

"(3) The minister, represented by a lawyer or otherwise, is entitled to be heard on the argument of an appeal under this section."

Chair, this is just a technical amendment that they're going to be represented by a lawyer or otherwise as opposed to counsel or otherwise.

The Chair (Mr. Shafiq Qaadri): Any comments, questions on government motion 191? If not, we'll proceed to the vote. Those in favour of government motion 191, if any? Those opposed? Government motion 191 carries.

Shall section 264, as amended, carry? Carried.

Shall section 265 carry? Carried.

Government motion 192: Mr. Potts.

Mr. Arthur Potts: I move that clause 266(b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding "or entity" after "to a prescribed person".

The Chair (Mr. Shafiq Qaadri): Comments, questions? Ms. Martow.

Mrs. Gila Martow: Just to clarify, I'm assuming that this deals with if a licence is revoked, so I'm asking the government: Is this to clarify who gets the notice or the record if a licence is revoked? Because they've made other changes that it can be just a person; it doesn't have to be corporation or a children's aid society. Is this to follow suit? Is that the reason why they had to make this change?

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

Mr. Arthur Potts: Exactly. It broadens the spectrum of service providers.

Mrs. Gila Martow: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you. If there are no further comments on government motion 192,

those in favour? Those opposed? Government motion 192 carries.

Shall section 266, as amended, carry? Carried.

We'll now consider the next five sections en bloc; that is, sections 267 to 271. Sections 267 to 271: Shall they carry? Carried.

We'll now proceed to PC motion 192.1. Mr. McDonell.

Mr. Jim McDonell: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section:

“Unannounced inspections

“271.1 Inspections carried out under this part shall not be announced to the licensee in advance.”

The Chair (Mr. Shafiq Qadri): Further comments? Ms. Martow.

Mrs. Gila Martow: I think we heard loud and clear from the youth who had aged out of care and came here and presented so nicely that they want surprise inspections, that they felt their living conditions were often rundown, and once a year, when they knew there was going to be an inspection, it would be nice for a week or a few days. Things like bathmats and just very basic things wouldn't get replaced until the home—and it should be a home. It's not a detention centre; it's their home—that they thought should be replaced, but that they wouldn't replace until they knew there was an inspection.

So you're just sort of wondering—you know, if you got a letter in the mail telling you that the police were going to be checking your driving on such and such a date at such and such a time, you'd just be very cautious at one time a year, and then the rest of the time you'd feel very safe that there was nobody watching you.

What is the point of these inspections, I guess, is what I would ask the government? What is the point of the inspections if there's advance notice? Well, it's better than nothing, because then they have to fix the place up for at least that point in time. It's certainly better to have notices and inspections than have no inspections. But maybe there's something in between where they're told, “We're going to be coming between this date and this date,” and it's fairly broad—within a month.

I would expect that anybody who has a licence and is getting paid should expect surprise inspections. How does it work with restaurants and things like that? I'm not an expert, but they have inspections. Are they surprise inspections? I would assume they are, but I'm not positive.

The Chair (Mr. Shafiq Qadri): Further comments? Ms. Kiwala.

Ms. Sophie Kiwala: Section 272 of the act provides authority to an inspector to conduct an inspection “at any reasonable time and without a warrant or notice,” so it is covered in section 272.

Mrs. Gila Martow: It is covered in section 272, and this is section 271—sorry, Chair. So maybe we can go and look at section 272.

Ms. Sophie Kiwala: We still do unannounced.

Mrs. Gila Martow: If you could tell me where exactly it's covered in section 272. And again, I hate to bug Nathalie, the former dean, but if it has to be covered for other sections and it's not, then doesn't it have to say that this is going to be carried through all sections pertaining to inspections of—

M^{me} Nathalie Des Rosiers: It's all under “Residential Licensing Inspections.” It reads as follows: “272. An inspector may, at any reasonable time and without a warrant or notice, enter and inspect.” So I think there's the clear authority to do the surprise visit that you want. I think that's already covered, basically.

The Chair (Mr. Shafiq Qadri): Thank you. And if there are colleagues from the ministry as well?

Ms. Melissa Phillips: Melissa Phillips, counsel with the ministry.

That's absolutely correct. I don't have anything further to add.

The Chair (Mr. Shafiq Qadri): Thank you. Are there any further comments before we proceed to the vote on PC motion 192.1? Seeing none, we'll proceed, then, to the vote. Those in favour of PC motion 192.1? Those opposed? PC motion 192.1 falls.

We'll now proceed to consider section 272. Shall section 272 carry? Carried.

We'll now proceed to government motion 193. We're at two minutes, by the way, by my clock.

Mr. Jim McDonell: Chair.

The Chair (Mr. Shafiq Qadri): Mr. McDonell.

Mr. Jim McDonell: I'm just wondering if you would give us a chance to go back to get ready for question period instead of starting another motion.

The Chair (Mr. Shafiq Qadri): If that's agreeable to my colleagues, we'll reconvene at 2 p.m. today.

The committee recessed from 1014 to 1400.

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. We're now back in session. Bill 89: Dispense, as you know. We'll now move to government motion 193. Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: I move that the English version of subsection 273(2) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out “verbally” in the portion before clause (a) and substituting “orally”.

This is simply to ensure that both oral and in-writing demands can be made under the bill.

Le Président (M. Shafiq Qadri): Merci, Madame Des Rosiers. Des commentaires? Questions?

Mrs. Gila Martow: What number are we on?

The Chair (Mr. Shafiq Qadri): Number 193.

Mrs. Gila Martow: Sorry, Chair.

The Chair (Mr. Shafiq Qadri): No problem.

Mrs. Gila Martow: Oh, it just changes “verbally” to “orally.” No comment.

The Chair (Mr. Shafiq Qadri): I think that's safe. We'll now proceed to the vote, then. Those in favour of government motion 193? Those opposed? Motion 193 is carried.

NDP motion 194: Miss Taylor.

Miss Monique Taylor: I move that subsection 273(4) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Time of inspection

“(4) An inspector shall conduct an inspection at a time when children receiving residential care are most likely to be at the premises.

“Child’s right to refuse

“(4.1) Despite clause (1)(g), a child may refuse to be questioned by the inspector. However, on the request of a child, the inspector shall meet with the child to discuss any matters of concern.”

This is something that we heard from depositions, the fact that they should be in the home and they should be able to have the opportunity to speak freely or not, if they so choose. It just goes in the fact of respecting young people’s rights and ensuring that when someone is visiting their home, they have a right to first of all be present, and secondly to speak to inspectors and not feel concerned about that. I think it’s important that we’re respecting young people’s wishes when it comes to their own homes.

The Chair (Mr. Shafiq Qadri): Further comments to NDP motion 194? Ms. Martow.

Mrs. Gila Martow: I just want to add to that and say that I believe this also recognizes the fact that a child may refuse to speak, only later to decide that now they do want to speak, so we have to have some flexibility and recognition of that. I believe that this is also addressed in the next amendment put forward by the government, so I would suggest that we don’t argue too much on this side of the room since it looks like it’s going to get addressed.

The Chair (Mr. Shafiq Qadri): Further comments? We’ll proceed, then, to NDP motion 194. All those in favour of NDP motion 194? All those opposed? NDP motion 194 falls.

Government motion 195.

M^{me} Nathalie Des Rosiers: I move that section 273 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Child’s right to meet with inspector

“(4.1) An inspector shall meet privately with a child who is receiving residential care in the place being inspected, if the child requests such a meeting.”

This is to address the previous issue.

The Chair (Mr. Shafiq Qadri): Miss Taylor.

Miss Monique Taylor: I appreciate that the government has decided to put this forward, but it still leaves the part out making sure that when inspections are done, the youth are home so that they do have the opportunity. So even though we’ve hit part of it, part of it is also missed.

The Chair (Mr. Shafiq Qadri): Any further comments on government motion—yes, Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: At times, if there is an emergency, it might be really appropriate to have an

inspection even if the children are not present. So that’s the reason for leaving that part out.

The Chair (Mr. Shafiq Qadri): We’ll now proceed, unless there are further comments on government motion 195? We’ll proceed, then, to the vote.

Those in favour of government motion 195? Those opposed? Motion 195 is carried.

Government motion 196.

M^{me} Nathalie Des Rosiers: I move that the English version of subsection 273(5) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out “counsel” and substituting “a lawyer”.

The Chair (Mr. Shafiq Qadri): Comments on government motion 196? Madame Martow.

Mrs. Gila Martow: I always thought that for a lawyer, the term was always “legal counsel.” That’s what I remember seeing in documents, in newspaper articles. “Counsel,” I guess, is more general, but I’m just not sure why we had to—

M^{me} Nathalie Des Rosiers: This is technical; it’s just for consistency. We’ve used in motion 191 “a lawyer,” and that’s why it’s just a consistency issue.

Mrs. Gila Martow: Okay.

The Chair (Mr. Shafiq Qadri): Any further comments on government motion 196? We’ll proceed to the vote. Those in favour of government motion 196? Opposed? Motion 196 carries.

Shall section 273, as amended, carry? Carried.

I’m going to consider the next four sections en bloc, which are 274 to 277. That’s 274 to 277. Shall they carry? Carried.

We’ll now move to government motion 197.

M^{me} Nathalie Des Rosiers: I move that section 278 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following definition:

“Assistant commissioner’ means an assistant commissioner appointed under the Freedom of Information and Protection of Privacy Act; (‘commissaire adjoint’)”

The Chair (Mr. Shafiq Qadri): Comments on 197?

M^{me} Nathalie Des Rosiers: This is another technical amendment, just to ensure that we have the right assistant commissioner.

The Chair (Mr. Shafiq Qadri): All in favour of government motion 197? All opposed? Motion 197 is carried.

Government motion 198.

M^{me} Nathalie Des Rosiers: I move that the definition of “capable” in section 278 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding “and ‘capacity’ has a corresponding meaning” at the end.

It’s just to ensure that “capable” and “capacity” are understood to mean the same thing.

The Chair (Mr. Shafiq Qadri): Comments on government motion 198? We’ll proceed to the vote. Those in favour of 198? Those opposed? Motion 198 carries.

Government motion 199.

M^{me} Nathalie Des Rosiers: I move that section 278 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following definition:

“‘incapable’ means not capable, and ‘incapacity’ has a corresponding meaning; (‘incapable’)”

It’s for the same reason: to ensure that “incapable” and “incapacity” are understood similarly.

Le Président (M. Shafiq Qaadri): Merci pour la clarification. Des commentaires ou des questions? Seeing none, all those in favour of government motion 199? Opposed? Government motion 199 carries.

Government motion 200.

M^{me} Nathalie Des Rosiers: I move that section 278 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following definition:

“‘information practices’ means the policy or policies respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information; (‘pratiques relatives aux renseignements’)”

Le Président (M. Shafiq Qaadri): Des commentaires ou des questions? On procède avec le vote. Les « pour » pour—

Interjection.

The Chair (Mr. Shafiq Qaadri): Oh, sorry. Okay, we’ll do it in English. We’ll proceed with the vote. Those in favour of government motion 200? Those opposed? Motion 200 carries.

Madame Des Rosiers: motion 201.

M^{me} Nathalie Des Rosiers: I move that section 278 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following definition:

“‘service provider’ includes a lead agency designated under section 29; (‘fournisseur de services’)”

The Chair (Mr. Shafiq Qaadri): Madame Taylor.

Miss Monique Taylor: The use of “lead agency” is still confusing to many people. We know that we’ve seen lead agencies be implemented in the children’s mental health area, but is the government planning on using lead agencies in other service sectors? We’re not quite sure, and I don’t think the legislation makes it very clear, so I would ask the government for clarification.

The Chair (Mr. Shafiq Qaadri): Any further comments or replies?

M^{me} Nathalie Des Rosiers: I think this change is simply to eliminate a gap in the application of that part. The addition of the definition of “service provider” eliminates a potential gap by ensuring that lead agencies are not custodians under FIPPA but would be subject to the provisions of the act. Does that help you? Or maybe I misunderstood—

Miss Monique Taylor: No, I would still like to know if lead agencies are going to be used in other sectors.

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M^{me} Nathalie Des Rosiers: Ah, I don’t know that.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Miss Monique Taylor: Maybe we can ask the ministry folks.

Mr. Mike Colle: Point of order. Can we have that question by the member restated for all of us again?

The Chair (Mr. Shafiq Qaadri): Sure. Please, you’re welcome to. That’s not a point of order. Just go ahead.

Miss Monique Taylor: Yes, sure. It’s just about where the government is going with the lead agencies. Children’s mental health already has lead agencies, so are they planning on putting lead agencies in other sectors like children’s aid societies or corrections? We don’t know, and we didn’t find the legislation very clear that it was just specifically for children’s mental health. Is this allowing it for other things at the same time? We don’t know.

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

Ms. Esther Levy: Esther Levy Ministry of Children and Youth Services, director of the Child Welfare Reform Project Team. The intent at this time is that this provision relates to mental health lead agencies.

Miss Monique Taylor: So is it clear that it’s just for children’s mental health within the legislation, or does it leave it open for interpretation and leave it open for it to be put into other sectors?

Ms. Esther Levy: The legislation allows for the designation of lead agencies. The ministry’s intent at this time is that it is for mental health lead agencies.

Miss Monique Taylor: But it does leave it open.

Ms. Esther Levy: Yes.

Miss Monique Taylor: Okay. Thank you. I would just hope that—we have enough bureaucracy through so many of our systems that adding lead agencies into child welfare, corrections or whatever other places they see fit really would not correct the issues that we see before us within our child services. I just wanted to put that on the record.

The Chair (Mr. Shafiq Qaadri): Any further comments on 201? If none, we’ll proceed to the vote. Those in favour of favour of government motion 201? Those opposed? Motion 201 carries.

Shall section 278, as amended, carry? Carried.

Government motion 202.

M^{me} Nathalie Des Rosiers: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Minister’s Powers to Collect, Use and Disclose Personal Information”:

“Confidentiality provisions prevail

“278.1 Subsections 85(8), (9) and (10) and 131(11) prevail over this part.”

This amendment really moves a provision that currently appears within section 281(5) to the beginning of part X. It’s just to provide more clarity.

The Chair (Mr. Shafiq Qaadri): Ms. Martow?

Mrs. Gila Martow: I was hoping that this was going to provide more protection of privacy, but I'm just not sure how. So I would ask the government—or, if there's legal counsel here or somebody from the ministry—to explain if this is going to protect privacy and, if it is, how.

The Chair (Mr. Shafiq Qaadri): Welcome.

Ms. Anne Premi: Hi. I'm Anne Premi from the Ministry of Children and Youth Services. I'm the director of the Strategic Information and Business Intelligence Branch.

All this does is move a provision that was a little further along in part X up to the front of it. There are particular privacy rules with regard to hearings. It just moves it up to the front to clarify that it prevails over the entire part, so it's for clarity.

The Chair (Mr. Shafiq Qaadri): Any further comments on 202? We'll proceed then to the vote. Those in favour of government motion 202? Those opposed? Motion 202 carries.

We'll proceed now to the next section: government motion 203.

M^{me} Nathalie Des Rosiers: I move that subsections 279(3) and (4) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Information other than personal information

“(3) The minister shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

“Personal information limited to what is reasonably necessary

“(4) The minister shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.”

This amendment is just a classic iteration of what we should expect in that type of section on privacy.

The Chair (Mr. Shafiq Qaadri): Comments on motion 203? If none, we'll proceed to the vote. Those in favour of government motion 203? Opposed? Motion 203 carries.

Government motion 204.

M^{me} Nathalie Des Rosiers: I move that subsection 279(5) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out “other ministers” and substituting “other ministers of the crown in right of Ontario”.

This is obviously a technical amendment.

The Chair (Mr. Shafiq Qaadri): Comments on 204? Seeing none, we'll proceed to the vote. Those in favour of government motion 204? Those opposed? Motion 204 passes.

Motion 205.

M^{me} Nathalie Des Rosiers: I move that that subsection 279(6) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Deemed compliance

“(6) For the purpose of clause 42(1)(e) of the Freedom of Information and Protection of Privacy Act, clause 32(e) of the Municipal Freedom of Information and Protection of Privacy Act or clause 43(1)(h) of the Personal Health Information Protection Act, 2004, a disclosure of personal information by an institution or a health information custodian, within the meaning of those acts, under subsection (2) or (5) is deemed to be for the purposes of complying with this act.”

Again, this is a technical amendment to ensure that it complies with the other acts.

The Chair (Mr. Shafiq Qaadri): Comments on 205? If not, we'll proceed to the vote. Those in favour of government motion 205? Opposed? Motion 205 carries.

Shall section 279, as amended, carry? Carried.

We now proceed to government motion 206.

M^{me} Nathalie Des Rosiers: I move that subsection 280(3) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Notice required by s. 39(2) of FIPPA

“(3) If the minister collects personal information indirectly under subsection (1), the notice required by subsection 39(2) of the Freedom of Information and Protection of Privacy Act may be given by,

“(a) a public notice posted on a government of Ontario website; or

“(b) any other method that may be prescribed.

“Notice to and by service providers

“(4) The minister shall advise a service provider that collected personal information under subsection (1) of the notice referred to in subsection (3) and the service provider shall advise the individual to whom it provides a service of the information set out in the notice in the form and manner specified by the minister.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 206? Madame Martow.

Mrs. Gila Martow: This seems to deal with how the minister deals with personal information collected indirectly, but I'm just wondering if the government can clarify what they consider to be indirect.

M^{me} Nathalie Des Rosiers: I think the language is about ensuring that the ministry posts notice about how and for what purpose it's collecting personal information and then ensuring that the service providers give that information to the client.

Mrs. Gila Martow: Again, a lot of times there is so much overlap with children and youth in care. There are the other children and youth in the home. There are other events. There's interaction with families at school or in the neighbourhood. There are siblings related to that situation.

So I'm wondering if indirectly, especially with computers cross-referencing—although CPIN doesn't seem to have much searchability; it seems to be like old technology that we're putting in. But on most computers, the cross-referencing is just unbelievable, and that is what's so incredible about computers. It's not just one

document; it's that that document can be linked to so many other documents.

I'm just wondering if we're going to be addressing the fact that now that we're putting everything online—and it's all this really personal information that the youth who have aged out of care kept coming and speaking to us about, how they're so concerned about their personal information. We all know that if there's one thing we try to teach kids, it's that once something is online, it's online forever. Even if you delete it from whatever, it's there. I think we understand that, as legislators.

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What I guess I'm asking is—we don't want to see problems down the road. Everybody is working very hard on this bill. Indirectly, it could mean a lot of things to a lot of people, but I'm just very concerned. I don't want somebody who did not give disclosure for their information—but somehow, indirectly, their information is getting out there. What safeguards are we putting in to ensure that doesn't happen?

The Chair (Mr. Shafiq Qadri): Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: This is just the notice provision. Obviously, the people are subject to the entire array of the act—not to disclose personal information except when it's absolutely necessary; we just passed the amendment before. This is simply the notice provision to make sure that people know where and why this has been disclosed. So it's very important. It's part of the protection of privacy, as well, that you know if, indeed, there is some personal information that could be disclosed. So both aspects of it are important in the privacy protection.

The Chair (Mr. Shafiq Qadri): Any further comments on government motion 206? We'll proceed, then, to the vote. Those in favor of government motion 206? Those opposed? Motion 206 carries.

Shall section 280, as amended, carry? Carried.

We'll proceed now to government motion 207.

M^{me} Nathalie Des Rosiers: I move that clause 281(5)(b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out.

The Chair (Mr. Shafiq Qadri): Comments? Ms. Martow.

Mrs. Gila Martow: So—

M^{me} Nathalie Des Rosiers: Just to explain this, we moved the section earlier, so we don't need it anymore. It's to eliminate the redundancy.

Mrs. Gila Martow: Okay. All right. That was my question.

The Chair (Mr. Shafiq Qadri): We'll proceed, then, to the vote. Those in favour of government motion 207? Those opposed? Motion 207 carries.

Shall section 281, as amended, carry? Carried.

NDP motion 208.

Miss Monique Taylor: I move that section 282 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Collection, use or disclosure etc. of personal information—requirement for consent

“282. A service provider shall not collect personal information about an individual for the purpose of providing a service or use or disclose that information unless either of the following apply:

“1. The service provider has the individual's consent under this act and the collection, use or disclosure, to the best of the service provider's knowledge, is necessary for a lawful purpose.

“2. The collection, use or disclosure without the individual's consent is permitted or required by this act and written notice is given to the individual within a reasonable period of time following the collection, use or disclosure. However, notice need not be given to the individual if such notice is prohibited by this act or by a treaty, agreement or arrangement made under an act or an act of Canada.”

This is just ensuring that written notice is given when information is collected and the individual has refused to do so—so ensuring that they have written notice. That's pretty much it.

The Chair (Mr. Shafiq Qadri): Further comments on NDP motion 208? If there are none, we'll proceed to the vote. Those in favour of NDP motion 208? Those opposed? Motion 208 falls.

Shall section 282 carry? Carried.

Shall section 283 carry? Carried.

Government motion 209.

M^{me} Nathalie Des Rosiers: I move that clauses 284(2)(a) and (b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“(a) the information to be collected is reasonably necessary to provide a service or to assess, reduce or eliminate a risk of serious harm to a person or group of persons and it is not reasonably possible to collect personal information directly from the individual,

“(i) that can reasonably be relied on as accurate and complete, or

“(ii) in a timely manner;

“(b) the information is to be collected by a society from another society or from a child welfare authority outside of Ontario and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child;

“(b.1) the information is to be collected by a society and the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 34(1);”

The amendment clarifies a little bit the threshold that service providers are required to meet to override the requirement to obtain consent to collect an individual's personal information indirectly. So that's provide clarification, raise the threshold, and ensure that we do it only when it's necessary.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 209? Madame Martow.

Mrs. Gila Martow: I'll just say, on this whole collecting of information with computerization: I'm assuming that indirectly, possibly, as the member just spoke about, other agencies in other jurisdictions—and we're trying to combat human trafficking. We can't do that just small jurisdictions; we need to have that information and share it. I would hope that we're going to get creative using social media as a possible tool, the way the police have done. Hopefully, we're finding the right balance between privacy and collecting useful information.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 209? If there are none, we'll proceed to the vote. Those in favour of government motion 209? Opposed? Motion 209 carries.

NDP motion 210.

Miss Monique Taylor: I move that section 284 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Clarification

“(3) For greater certainty, clause (2)(a) does not apply in circumstances where an individual has withheld or withdrawn their consent to the collection of personal information.”

This is a recommendation from the child advocate, ensuring that if consent has been denied, the person's rights are still being upheld, and just ensuring that there is further clarification to the previous motion, really.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 210? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 210? Those opposed? Motion 210 falls.

Shall section 284, as amended, carry? Carried.

Government motion 211.

M^{me} Nathalie Des Rosiers: I move that section 285 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Direct collection without consent

“285. A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if,

“(a) the collection is reasonably necessary for the provision of a service and it is not reasonably possible to obtain consent in a timely manner;

“(b) the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or

“(c) the service provider is a society and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.”

This amendment obviously clarifies the risk thresholds that service providers must meet in order to override the consent directive that normally is expected, and makes it proportionate to exactly what they are seeking to do because it adds the risk of serious harm. That's the key word.

The Chair (Mr. Shafiq Qaadri): Further comments on 211? Seeing none, I'll proceed to the vote. Those in

favour of government motion 211? Those opposed? Motion 211 carries.

NDP motion 212.

Miss Monique Taylor: I withdraw, Chair.

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

Shall section 285, as amended, carry? Carried.

Shall section 286 carry? Carried.

NDP motion 213.

Miss Monique Taylor: I move that subsection 287(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Use

“287(1) A service provider shall not use personal information in its custody or under its control except,”

What this does, Chair, is it puts the onus back on that they can't use the information unless it's specified in the reasons below, in the following (a) to (k), a recommendation by the provincial advocate. So it just changes it to ensure that it's a “not” unless it follows the following criteria.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 213? Ms. Martow.

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Mrs. Gila Martow: We certainly heard from a lot of people in deputations that they're concerned about privacy. I think we even had the privacy commissioner here saying that they were worried about privacy.

In a medical setting, you rule things out before you make a diagnosis. As opposed to, “Oh, I think the person has this,” you first have to prove that they don't have other things, if that makes sense. A lot of times, you're much less likely to make a mistake if you have to prove certain criteria because, people being people, they just collect information and they're not necessarily going through the checklist in their mind or in their notebook as to whether or not they have a valid reason to collect or disclose that information. By doing it from the other angle and saying, “Well, you have to demonstrate why you are collecting or disclosing information because you can only do it in these certain circumstances,” that is a fairly strong protection of privacy. Again, as I said before, it comes down to balance between doing the best job we can for the children and youth in care and preventing possible problems.

I guess the act is done with the best of intentions, but computers and artificial intelligence and things like that are only going to get better. I would hope that we're thinking of future technologies that are going to be out there and being very careful with how this bill is written.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 213? Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: Currently, 287 says, “A service provider may use personal information collected for the purpose of providing a service,” so it limits the amount of information that's collected because it can only be collected for the purpose of providing a service.

The amendment proposed here by motion 213 indeed seems to enlarge the possibility because it doesn't have the same limitation. You should only allow collecting personal information for the purpose of something, for the purpose of providing the service.

I recommend voting against this.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 213? Those opposed? Motion 213 falls.

Government motion 214.

M^{me} Nathalie Des Rosiers: I move that clause 287(1)(i) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out "an employee, agent or former employee or agent of the service provider" and substituting "an officer, employee, agent or former officer, employee or agent of the service provider".

This amendment aligns language in this section and clarifies that it includes the officer as well as employee, agent and former officer, employee and agent.

The Chair (Mr. Shafiq Qaadri): Further comments on 214? Seeing none, we'll proceed to the vote. Those in favour of government motion 214? Those opposed? Motion 214 carries.

Government motion 215.

M^{me} Nathalie Des Rosiers: I move that subsection 287(2) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"Exception

"(2) Despite clause (1)(a), where the individual to whom the personal information relates expressly instructs otherwise,

"(a) a society may nonetheless use that personal information,

"(i) if it is reasonably necessary to assess, reduce or eliminate a risk of harm to a child, or

"(ii) for a prescribed purpose related to a society's functions under subsection 34(1); and

"(b) a service provider may nonetheless use that personal information if it is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons."

This amendment clarifies, again, the threshold that is required. It's the same wording—"serious harm"—if you're going to override the necessary consent that usually we require around personal information.

The Chair (Mr. Shafiq Qaadri): Further comments on 215? Ms. Martow.

Mrs. Gila Martow: Again, it's going to be tough because, looking back, if no problems were found, people could argue and say that there wasn't a reasonable risk: "Look, there was nothing found." It's kind of like police warrants: When they don't find anything, then everybody thinks they shouldn't have had the warrant. Of course, the whole point is that hindsight is 20/20. You don't know what there's going to be when you start digging.

A lot of the language is—I don't know that it can be helped, but nobody seems to have to even demonstrate

what their suspicions are in order to go and collect information or disclose information, whereas even the police have to go to a judge and get a warrant. Well, we can't be doing that with child welfare situations. I just hope that there is going to be really strong clarification somewhere down the road of what is reasonably necessary and what their concerns are.

We'll leave it at that.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 215? Fair enough. We'll proceed to the vote. Those in favour of government motion 215? Those opposed? Motion 215 carries.

NDP motion 216.

Miss Monique Taylor: I move that section 287 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Clarification re use

"(3) For greater certainty, a provision in this part that authorizes the use of personal information does not authorize the disclosure of person information unless the provision expressly provides that the disclosure is authorized."

What this is, again, is a recommendation of the child advocate. Although the use is authorized, it doesn't necessarily mean that the disclosure is automatically authorized. This is just for clarification on the previous.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 216? Ms. Martow.

Mrs. Gila Martow: I'm just wondering if "person information" is supposed to be "personal information," after "disclosure." I don't know. I'm just asking. Either way, it's not likely to pass, but I understand what the member is suggesting. I think that it's similar to how somebody telling you a story doesn't mean that you have their permission to repeat that story, just because they've told you the story.

So again, just because somebody has authorized you to collect information doesn't mean that they are authorizing you to share that information, but I think that, again, it could be tying the hands of some workers and creating a lot of confusion. I can't say it enough that when you're working with personal information, you have to put that professional hat on your head and understand what it means to be a professional and to be careful.

Even if you're talking on the phone with your supervisor and you're in a public store in a mall, if that's when your supervisor phoned you back, you have to say, "Hold on a second." You're talking personal information about a case, and you have to go to your car or somewhere quiet where nobody can overhear you.

There are a lot of concerns with privacy. We understand how horrible it is for an adult to have something negative told about them in the public sphere. I think that for children and youth it can actually be completely devastating. They can't overcome it. I hope that we're doing a good job protecting their privacy and their feelings.

The Chair (Mr. Shafiq Qaadri): Madame Des Rosiers?

M^{me} Nathalie Des Rosiers: I think everybody agrees with the intent of this motion. It's the essence of privacy protection that you need to have a purpose for both the use and the disclosure. I think that the current wording that we have in the act does provide for that, so I don't think we need these additional provisions. Indeed, it may be confusing, because the current wording is actually more consistent with what we have in other places like the Personal Health Information Protection Act and so on. That's the reason why I'm going to vote against this.

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The Chair (Mr. Shafiq Qadri): Further comments on NDP motion 216? None? We'll proceed to the vote. Those in favour of NDP motion 216? Those opposed? Motion 216 falls.

Shall section 287, as amended, carry? Carried.

NDP motion 217.

Miss Monique Taylor: I move that subsection 288(1) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Use

"288(1) A service provider shall not, without the consent of the individual, disclose personal information about an individual in the service provider's custody or under its control except,"

This puts the emphasis on the "shall not" instead of allowing the "shall" to go forward, so that it strengthens the personal respect of the youth who have chosen not to consent and ensures that the default is the "shall not," except in the following, which would be laid out.

The Chair (Mr. Shafiq Qadri): Comments to 217?

M^{me} Nathalie Des Rosiers: I'm going to recommend voting against this because that is the same issue as before. In the act now, it's clear that the information must be collected for the purpose of providing a service. This, in a way, expands the type of information that can be collected because it only talks about information in the service provider's custody or under its control, as opposed to limiting it for the purposes of.

The Chair (Mr. Shafiq Qadri): Further comments on NDP motion 217? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 217? Those opposed? Motion 217 falls.

Government motion 218.

M^{me} Nathalie Des Rosiers: I move that clause 288(1)(f) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by striking out the portion before subclause (i) and substituting the following:

"(f) subject to section 290, for the purpose of complying with,"

This obviously is really intended to ensure that the disclosure is to comply with a summons, a court order or rules of proceedings relating, for example, to records of mental health and mental disorder. It's really to provide for purposes of complying with summonses and court orders.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 218? If none, we'll proceed to the vote. Those in favour of government motion 218? Those opposed? Motion 218 carries.

NDP motion 219.

Miss Monique Taylor: I withdraw.

The Chair (Mr. Shafiq Qadri): Thank you, Miss Taylor.

Government motion 220.

M^{me} Nathalie Des Rosiers: I move that subsection 288(2) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"To assess, etc. risk of harm to a child

"(2) A society may disclose to another society or to a child welfare authority outside Ontario personal information that has been collected for the purpose of providing a service if the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

"For a prescribed purpose related to society's functions

"(2.1) A society may disclose personal information that has been collected for the purpose of providing a service if the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 34(1)."

This amendment allows for societies to disclose personal information without consent if the action is necessary to protect a child. It also establishes the threshold for the collection, use and disclosure of this information by societies among themselves.

The Chair (Mr. Shafiq Qadri): Further comments? Ms. Martow.

Mrs. Gila Martow: So we're creating a network across the province of Ontario to share information. I'm wondering, when the ministry set up CPIN, whether they considered what system would enable them to better share information with other provinces, other jurisdictions.

M^{me} Nathalie Des Rosiers: If I may, I think this provision is intended to allow this framework to work. Indeed, I think some of the inquests have recommended that there be better sharing of information, and I think this provides the authority to do that.

Mrs. Gila Martow: Yes. I understand that that's what this section is dealing with, exactly. But I'm just wondering, in terms of—we can put it in the act, but if we're developing a computer system, an electronic data collection system—if it's a different model of software that can't easily speak to whatever software is in another province and all we can do is email each other the information, maybe there's a system that we can cross-reference somewhat—not to go into each other's files, obviously—but if there's something very basic that they would know, if that child has ever been under the child welfare system in the province.

I'm thinking of the specific case that we've been hearing about of the boy who was diabetic and the family

moved, I believe, from BC to Alberta and the child passed away unfortunately because it was out of sight, out of mind. If there is a child who disappears from the jurisdiction, if there's a way to easily trace them through our data collection, just their basic name or somehow to know where they've gone to, so that we can alert the authorities over there. I don't know if anybody from the ministry has any information on when they went with CPIN, if that was one of the reasons they liked it, because there was a way to maybe co-operate with some of the other big provinces.

The Chair (Mr. Shafiq Qadri): Mr. McDonell.

Mr. Jim McDonell: Just a question: Is there the ability to accept or share information from other provinces? I talked about the serious case in eastern Ontario where the family was close to being arrested in Quebec, but had moved to Ontario, and it took a number of years before—and only by accident—it was found out. If somebody falls off the radar somewhere, it's not likely that they've disappeared; they've just gone somewhere else. Is there a way of catching that?

The Chair (Mr. Shafiq Qadri): Go ahead.

Mr. Peter Kiatipis: I'm Peter Kiatipis. I'm the acting director of the Child Welfare Secretariat at the Ministry of Children and Youth Services. There is currently an interprovincial protocol with all provinces and territories as signatories, with the exception of Quebec at the moment, around the movement of children involved in the child welfare system across the provinces and territories that anticipates that information-sharing between provinces and territories when children and families move across borders.

There's also an alert system that is in place whereby information is shared with other jurisdictions where there is a child who has moved, where there might be concerns around that movement.

The Chair (Mr. Shafiq Qadri): Mr. McDonell.

Mr. Jim McDonell: Just a point on that case: It was considered the worst case in Quebec's history, and yet it was allowed to just disappear into Quebec. Again, it's not something that got better; it took a while for—actually, I think children's aid in Ontario found out about it by accident because they made an application, but they were not at home. They visited, and they saw what was going on.

It speaks to that importance that if it's a huge issue, like in this case here, a huge issue in Quebec, but there was no way of finding out, and by simply crossing a border that's a provincial border—which is no problem—we can skip out on the authorities. There seems to be some need for some process to catch that.

The Chair (Mr. Shafiq Qadri): Any further comments before we proceed to the vote? If none, those in favour of government motion 220? Those opposed? Motion 220 carries.

Shall section 288, as amended, carry? Carried.

Government motion 221.

M^{me} Nathalie Des Rosiers: I move that subsections 289(3), (5), (6) and (8) of the Child, Youth and Family

Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Minister may require disclosure

“(3) The minister may require a service provider to disclose information, including personal information, to a prescribed entity, if the prescribed entity meets the requirements under subsection (5), or to a person or entity that is not a prescribed entity, for the purposes described in subsection (1) and a person or entity, including a prescribed entity, to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

“Requirements for prescribed entity

“(5) A service provider may disclose personal information to a prescribed entity under subsections (1) or (3) if,

“(a) the prescribed entity has in place practices and procedures to protect the privacy of the individuals whose personal information it receives and to maintain the confidentiality of the information; and

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“(b) the commissioner has approved the practices and procedures.

“Exception

“(6) Despite clause (5)(b), a service provider may disclose personal information to a prescribed entity under subsection (1) or (3) before the first anniversary of the day this section comes into force even if the commissioner has not approved its practices and procedures.

“Prescribed entity or other person or entity may collect personal information

“(8) A prescribed entity or a person or entity that is not a prescribed entity is authorized to collect the personal information that a service provider may disclose to it under subsection (1), (2) or (3).”

This amendment clarifies that the minister may require a service provider to disclose personal information, but only if the entity has met the privacy practices that have been approved by the Information and Privacy Commissioner. That's the reason; it's to ensure that the people who are going to have the power to disclose information are well covered by the privacy commissioner's guidelines.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 221? If none, we'll proceed to the vote.

Those in favour of government motion 221? Those opposed? Motion 221 carries.

Shall section 289, as amended, carry? Carried.

Shall section 290 carry? Carried.

NDP motion 222.

Miss Monique Taylor: I move that subsection 291(2) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Implied consent

“(2) A consent to the collection and use of personal information may be implied if the collection is made directly from the individual to whom the information relates, is collected for the purpose of providing a service, and the use of personal information is reasonably incidental to the provision of that service.”

It’s the last line that’s new in this. What it does is it just strengthens the protection of the child who has either given or withheld the right of information. This is our advocate’s recommendation.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 222? Seeing none, we’ll proceed to the—Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: Actually, I think the wording broadens the authority of service providers to use personal information, because “reasonably incidental” is actually a bit—I think the current wording is more privacy-enhancing, the wording that is currently in the act, because it’s only, again, for the purposes of providing a service. Anyway, I’m going to recommend voting against this.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 222? Madame Taylor.

Miss Monique Taylor: Oh, no. Sorry. I thought it was voting.

The Chair (Mr. Shafiq Qaadri): Okay. All those in favour of NDP motion 222? All those opposed? NDP motion 222 falls.

NDP motion 223.

Miss Monique Taylor: I move that clause 291(5)(b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out.

It is too broad, and allows for notice to be missed or not seen.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 223? If none, we’ll proceed to the vote.

Those in favour of NDP motion 223? Those opposed? NDP motion 223 falls.

Shall section 291 carry? Carried.

Shall section 292 carry? Carried.

We’ll now proceed to the next section, which is section 293: NDP motion 224.

Miss Monique Taylor: I move that section 293 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Conditional consent

“293(1) If an individual places a condition on their consent to the collection, use or disclosure of personal information, the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal information by a service provider that is required by law.

“Individual to be informed

“(2) Before an individual places a condition on their consent, the individual shall be informed that the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal

information by a service provider that is required by law.”

If it follows the law, why would we go beyond that? It removes the established standards. It removes established standards and just ensures that we follow the law.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 224? If there are none, we’ll proceed to the vote. Those in favour of NDP motion 224? Those opposed? NDP motion 224 falls.

Shall section 293 carry? Carried.

NDP motion 225.

Miss Monique Taylor: I move that section 294 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Material change

“(2) For the purposes of subsection (1), if there has been a material change in circumstances that is likely to affect the individual’s decision to consent, a service provider shall not presume that a previously obtained consent fulfils the requirements of this act or that the individual has not withdrawn it.”

This would be in circumstances where the circumstances have changed. Yes, they have previously given consent, but things have changed, so they should have to get consent again before moving forward, instead of just a blanket—if they’ve given consent and something has changed, they should have to be able to give consent again.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 225?

M^{me} Nathalie Des Rosiers: We don’t define what “material change” is? The danger is, the service provider has obtained the consent. He or she cannot know what is a material change. I think it does create a certain amount of uncertainty as to when it is required to again seek the consent. That’s kind of unusual, I think, in this type of privacy protection.

The Chair (Mr. Shafiq Qaadri): Miss Taylor.

Miss Monique Taylor: If I give my consent to something and then circumstances have changed, why would my consent just be automatically—things have changed now. Why would it be taken for granted that I still give consent, even though circumstances have changed? They should have to go back and get consent again.

I don’t know. You’re going to vote against it anyway, so I’ll just leave it there.

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

Mr. Arthur Potts: Just for the record, we deal with it in the next amendment of ours. I think you’ll be satisfied with the next amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 225? We’ll proceed to the vote. All in favour of NDP motion 225? Those opposed? NDP motion 225 falls.

Shall section 294 carry? Carried.

Shall section 295 carry? Carried.

Government motion 226: Mr. Potts.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section:

“Differing capacity

“Re different information

“295.1(1) An individual may be capable with respect to some parts of personal information, but incapable with respect to other parts.

“At different times

“(2) An individual may be capable at one time, but incapable at another time.”

This just recognizes the fluidity of consent, and I think it addresses the issue of material change.

The Chair (Mr. Shafiq Qaadri): Further comments? There being none, we’ll proceed to the vote. Government motion 226: All in favour? All opposed? Government motion 226 is carried.

Government motion 227: Mr. Potts.

Mr. Arthur Potts: I move that clause 296(2)(b) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“(b) counselling to which the child has consented on their own under this act or the old act.”

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Martow.

Mrs. Gila Martow: I think this is kind of replacing participation with giving consent. A child could be in the room and not say a word, and they could be considered participating somehow, just by nodding or whatever. This sort of puts the onus on whatever adults are involved to ensure that the child or the youth has an understanding of what’s going on and that they’re providing some kind of consent. I’m quite hopeful that if the children and youth are involved in some of the decision-making or made to feel involved, they might be happier and it might make things easier for them and everybody who is working around them.

I think it’s a positive step. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martow. Thank you, Stephen, for your audio-visual support today.

Any further comments on government motion 227? Seeing none, we’ll proceed, then, to the vote. Those in favour of government motion 227? Those opposed? Motion 227 carried.

NDP motion 228.

Miss Monique Taylor: Previously, I had handed out a handout that went with this motion. If you still have that handout—

The Chair (Mr. Shafiq Qaadri): Sorry, could you just repeat that?

Interjection.

Miss Monique Taylor: No, it went out a while ago— at the beginning, I think. Personal Health Information Protection Act, remember? We handed this out.

Interjections.

Mr. Arthur Potts: I have it in the package around here.

Miss Monique Taylor: Do you have it?

Mr. Arthur Potts: Yes.

Mrs. Gila Martow: How come it’s not in my package?

Interjections.

Miss Monique Taylor: Can we take five minutes, then? It will give us a personal break too, and we can get that photocopied at the same time.

The Chair (Mr. Shafiq Qaadri): That’s fine. A five-minute recess.

The committee recessed from 1502 to 1510.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I’ll reconvene. As you know, we are on NDP motion 228, some secondary material. Or is that just part two of 228?

Miss Monique Taylor: No, no, sorry. That was just my information.

The Chair (Mr. Shafiq Qaadri): Okay. Fair enough. Hopefully all colleagues have received this.

I will now invite Miss Taylor to please enter NDP motion 228 into the record.

Miss Monique Taylor: I move that section 296 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Factors to consider for consent

“(2.1) A person who acts as a substitute decision-maker of an individual shall take into consideration the sorts of factors set out in subsection 24(1) of the Personal Health Information Protection Act, 2004 when making a decision to consent, to withhold consent or to withdraw consent.”

That’s why I handed out the actual piece from PHIPA that’s mentioned here, 24(1). It’s this piece that was handed out. It just ensures that the trustee power of attorney is working in the best interests and beliefs of the individual. If it’s in the Personal Health Information Protection Act, it should also be in the Child, Youth and Family Services Act so that it’s consistent.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 228? Seeing none, we’ll proceed to the vote. Those in favour of NDP motion 228? Those opposed? NDP motion 228 falls.

Shall section 296, as amended, carry? Carried.

Government motion 229: Mr. Potts.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section:

“Factors to consider for consent

“296.1(1) A person who consents under this part on behalf of or in the place of an individual to a collection, use or disclosure of personal information by a service provider, who withholds or withdraws such a consent or who provides an express instruction under clause 287(1)(a) shall take into consideration,

“(a) the wishes, values and beliefs that,

“(i) if the individual is capable, the person knows the individual holds and believes the individual would want

reflected in decisions made concerning the individual's personal information, or

“(ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal information;

“(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

“(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

“(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

“Determination of compliance

“(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal information about the individual by a service provider or provides an express instruction under clause 287(1)(a) and if the service provider is of the opinion that the substitute decision-maker has not complied with subsection (1), the service provider may apply to a body prescribed for the purposes of this section for a determination as to whether the substitute decision-maker complied with that subsection.

“Deemed application concerning capacity

“(3) An application to a body prescribed under subsection (2) is deemed to include an application to a prescribed body under subsection 298(3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 298 within the previous six months.

“Parties

“(4) The parties to the application are:

“1. The service provider.

“2. The incapable individual.

“3. The substitute decision-maker.

“4. Any person whom the prescribed body specifies.

“Power of prescribed body

“(5) In determining whether the substitute decision-maker complied with subsection (1), the prescribed body may substitute its opinion for that of the substitute decision-maker.

“Directions

“(6) If the prescribed body determines that the substitute decision-maker did not comply with subsection (1), it may give the substitute decision-maker directions and, in doing so, shall take into consideration the matters set out in clauses (1)(a) to (d).

“Time for compliance

“(7) The prescribed body shall specify the time within which the substitute decision-maker must comply with its directions.

“Deemed not authorized

“(8) If the substitute decision-maker does not comply with the directions of the prescribed body within the time

specified by the prescribed body, the substitute decision-maker is deemed not to meet the requirements of subsection 296(4).

“Public Guardian and Trustee

“(9) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the substitute decision-maker is required to comply with the directions and subsection (7) does not apply to the substitute decision-maker.

“Procedure

“(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.”

And that is why we have legislative drafters.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. I need you to read, under the section “Parties,” number 4 at the bottom of that section, again.

Mr. Arthur Potts: “4. Any other person whom the prescribed body specifies.”

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on the government motion? Ms. Martow.

Mrs. Gila Martow: I'll start off by saying “wow.” This is not what I call a tweak. It's definitely expanding the parameters of consent, specifically for the substitute decision-makers.

One of the problems with adding so much to the bill after people have given deputations is they might not like some of the things that we're putting in after the fact, and now they don't have a chance to respond and give their opinion. I'm just going to repeat myself: Clause-by-clause is not supposed to be so in depth, in my opinion. I suggested that we would have co-operated if the government wanted to rewrite the bill and bring it back to the House, with all their amendments written in. We would have understood that we maybe didn't have to have full debate, full deputations and hearings. I think it would have been faster and more efficient and, I'm thinking, more fair to many of our community members, who might have an opinion on some of these big amendments that are getting voted in by the government.

We live and we learn. I would suggest that next time there are that many amendments, that's where we consider moving.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 229? Mr. McDonell.

Mr. Jim McDonell: Just the purpose of the amendment, as short as it is.

Miss Monique Taylor: It's pretty much in line with what I just gave you.

Mrs. Gila Martow: Yes.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 229? If not, we'll proceed to the vote. Those in favour of government motion 229? Those opposed? Government motion 229 carries.

Shall section 297 carry? Carried.

Government motion 230.

Mr. Arthur Potts: I move that subsection 298(2) of the Child, Youth and Family Services Act, 2016, as set

out in schedule 1 to the bill, be struck out and the following substituted:

“Information about determination

“(2) If it is reasonable in the circumstances, a service provider shall provide, to an individual determined to be incapable, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed.”

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, despite your activity alarm there.

Any further comments on government motion 230? Seeing none, we’ll proceed to the vote. Those in favour of government motion 230? Those opposed? Government motion 230 carries.

Government motion 231.

Mr. Arthur Potts: I move that section 298 of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following subsections:

“Restriction on repeated applications

“(7) If a determination that an individual is incapable is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the body prescribed for the purposes of this section gives leave in advance.

“Grounds for leave

“(8) The prescribed body may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual’s capacity.”

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 231? Ms. Martow.

Mrs. Gila Martow: Well, obviously this makes sense. It’s just hard to understand why some of these things weren’t considered in the first place, I guess.

Definitely people’s situations change and circumstances change, and even a child’s or youth’s health can change. But I’m hoping we’re going to be ensuring that there is continuity and there is a reassessment of their situation, and we’re not relying on somebody’s previous analysis of the situation—that we’re always reassessing and reassessing, especially as children mature. The entire situation can change in terms of getting their consent and their understanding of what they are consenting to. I think there is an increase of children going into care who have special needs of various types, so it’s challenging and I think it’s important that we consider all of the potential problems that can arise.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 231? Seeing none, we’ll proceed to the vote. Those in favour of government motion 231? Opposed? Motion 231 carries.

Shall section 298, as amended, carry? Carried.

Government motion 232: Mr. Potts.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Integrity and Protection of Personal Information”:

“Appointment of representative

“298.1(1) An individual who is 16 or older and who is determined to be incapable may apply to a body prescribed for the purposes of this section for appointment of a representative to consent on the individual’s behalf to a collection, use or disclosure of personal information by a service provider.

“Application by proposed representative

“(2) If an individual is incapable, another individual who is 16 or older may apply to a body prescribed for the purposes of this section to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of personal information.

“Deemed application concerning capacity

“(3) An application to a prescribed body under subsection (1) or (2) is deemed to include an application to a prescribed body under subsection 298(3) with respect to the individual’s capacity, unless the individual’s capacity has been determined by a prescribed body under section 298 within the previous six months.

“Exception

“(4) Subsections (1) and (2) do not apply if the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

“Parties

“(5) The parties to the application are:

“1. The individual to whom the personal information relates.

“2. The proposed representative named in the application.

“3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26(1) of the Personal Health Information Protection Act, 2004.

“4. All other persons whom the prescribed body specifies.

“Appointment

“(6) In an appointment under this section, the prescribed body may authorize the representative to consent, on behalf of the individual to whom the personal information relates, to,

“(a) a particular collection, use or disclosure at a particular time;

“(b) a collection, use or disclosure of the type specified by the prescribed body in circumstances specified by the prescribed body, if the individual is determined to be incapable at the time the consent is sought; or

“(c) any collection, use or disclosure at any time, if the individual is determined to be incapable at the time the consent is sought.

“Criteria for appointment

“(7) The prescribed body may make an appointment under this section if it is satisfied that the following requirements are met:

“1. The individual to whom the personal information relates does not object to the appointment.

“2. The representative consents to the appointment, is at least 16 and is capable.

“3. The appointment is in the best interests of the individual to whom the personal information relates.

“Powers of prescribed body

“(8) Unless the individual to whom the personal information relates objects, the prescribed body may,

“(a) appoint as representative a different individual than the one named in the application;

“(b) limit the duration of the appointment;

“(c) impose any other condition on the appointment; or

“(d) on any person’s application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

“Termination

“(9) A body prescribed for the purposes of this section may, on any person’s application, terminate an appointment made under this section if,

“(a) the individual to whom the personal information relates or the representative requests the termination;

“(b) the representative is no longer capable;

“(c) the appointment is no longer in the best interests of the individual to whom the personal information relates; or

“(d) the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

“Procedure

“(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.”

The Chair (Mr. Shafiq Qadri): Any further comments on government motion 232? Ms. Martow.

Mrs. Gila Martow: I’ll just say “wow” again and ditto what I said before.

The Chair (Mr. Shafiq Qadri): Any further comments? We’ll proceed, then, to the vote. All those in favour of government motion 232? Those opposed? Government motion 232 carries.

Shall sections 299, 300 and 301 carry? Carried.

Government motion 233.

Mr. Arthur Potts: I move that clause 302(1)(a) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

“(a) shall take reasonable steps to ensure that the records of personal information collected for the purpose of providing a service that are in its custody or control

are retained, transferred and disposed of in a secure manner; and”

The Chair (Mr. Shafiq Qadri): Further comments on government motion 233? We’ll proceed, then, to the vote. Those in favour of government motion 233? Those opposed? Motion 233 carries.

Shall section 302, as amended, carry? Carried.

Government motion 234: Mr. Potts.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Individual’s Access to Personal Information”:

“Disclosure to successor

“302.1(1) A service provider may disclose personal information about an individual to a potential successor of the service provider, for the purpose of allowing the potential successor to assess and evaluate the operations of the service provider, if the potential successor first enters into an agreement with the service provider to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

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“Transfer to successor

“(2) A service provider may transfer records of personal information about an individual to the service provider’s successor if the service provider makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

“Definitions

“(3) In this section,

“‘potential successor’ and ‘successor’ mean a potential successor or a successor that is a service provider or that will be a service provider if it becomes a successor.”

The Chair (Mr. Shafiq Qadri): Comments on government motion 234? Mr. McDonell.

Mr. Jim McDonell: Was the privacy commissioner consulted on this? Any comments from him?

Mr. Arthur Potts: I’m not sure where particularly—

Mr. Jim McDonell: You’re in court.

Mr. Arthur Potts: I do know that it’s adding a section that provides authority of service providers to disclose and transfer information, which obviously was necessary and needed to be done. I’m not sure who flagged it for us, but it’s there.

The Chair (Mr. Shafiq Qadri): Miss Taylor.

Miss Monique Taylor: I just think this whole section and all of the amendments that are before us are telling of what consultation was done with the Information and Privacy Commissioner. We heard him very clearly when he came to the table that there needed to be a lot of changes. We’re seeing a lot of changes in front of us, but it’s concerning that the government wouldn’t go directly to him to ensure that they got it right in the first place, and that we’re now rewriting an entire section of the bill

that is critical to people's information and privacy. We're rewriting it in committee. It's unfortunate.

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

Mrs. Gila Martow: I would just add to Miss Taylor's comments that the problem becomes that then new sections are written, and the other community members and stakeholders can't comment on these new sections because we've already had the deputations. I'm worried that they're going to somehow accuse us of restricting their ability to comment on the legislation, which is, I'm sure, not what the government intended, but that's kind of the consequence of all this. It's unfortunate, but we'll see how it all goes over.

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

Mr. Jim McDonell: Could we have some comments from the—

Ms. Anne Premi: Hi. I'm Anne Premi from the Ministry of Children and Youth Services. There was close consultation over a number of months with the Information and Privacy Commissioner. This actually aligns our legislation with the Personal Health Information Protection Act. This is a similar provision to what is in the act, and actually is something that was suggested by the IPC.

A number of the other amendments that we've talked about were also stakeholder-suggested amendments.

The Chair (Mr. Shafiq Qaadri): Miss Taylor?

Miss Monique Taylor: Thank you. There are just so many amendments to this section and, like the previous member said, we're not going to be able to have these officers come back to tell us whether they think it's right this time. We just have to go with the flow and hopefully it works out.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 234? If not, we'll proceed to the vote. Those in favour of government motion 234? Opposed? Government motion 234 carries.

Government motion 235: Mr. Potts.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Individual's Access to Personal Information":

"Written public statement by service provider

"302.2(1) A service provider shall, in a manner that is practical in the circumstances, make available to the public a written statement in plain, easy-to-understand language that,

"(a) provides a general description of the service provider's information practices;

"(b) describes how to contact the service provider;

"(c) describes how an individual may obtain access to or request correction of a record of personal information about the individual that is in the custody or control of the service provider; and

"(d) describes how to make a complaint to the service provider and to the commissioner under this part.

"Use or disclosure contrary to service provider's information practices

"(2) If a service provider uses or discloses personal information about an individual, without the individual's consent, in a manner that is outside the scope of the service provider's description of its information practices under clause 1(a), the service provider shall,

"(a) inform the individual of the uses and disclosures at the first reasonable opportunity, unless the individual does not have a right of access under section 303 to a record of the information;

"(b) make a note of the uses and disclosures; and

"(c) keep the note as part of the record of personal information about the individual that it has in its custody or under its control or in a form that is linked to that record."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 235? Mr. McDonell.

Mr. Jim McDonell: Maybe just explain what the amendment is for or why it was added.

Mr. Arthur Potts: This actually addresses the concerns that Miss Taylor brought up in her motion 208 about making sure individuals are told if their information has been used. It just brings that section into being.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 235? If not, we'll proceed to the vote. Those in favour of government motion 235? Those opposed? Motion 235 carries.

Shall sections 303 and 304 carry? Carried.

NDP motion 236.

Miss Monique Taylor: I move that clause 305(1)(a) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out and the following substituted:

"(a) make the record available to the individual for examination and, at the request of the individual,

"(i) provide a copy of the record to the individual,

"(ii) explain the purpose and nature of the record, including any information that may be reasonably expected to cause emotional harm to the individual, and

"(iii) if reasonably practical, provide an explanation of any term, code or abbreviation used in the record;"

This is really just protecting young persons and their well-being, and ensuring that they understand. It's (ii) that's the new addition in there.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 236? If there are none, we'll proceed, then, to the vote. Those in favour of NDP motion 236? Those opposed? Motion 236 falls.

Government motion 237.

Mr. Arthur Potts: I move that clause 305(1)(a) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding "the purpose and nature of the record and" after "an explanation of".

The Chair (Mr. Shafiq Qaadri): Comments on 237? We'll proceed, then, to the vote. Those in favour of government motion 237? Opposed? Motion 237 carries.

Shall section 305, as amended, carry? Carried.

Shall section 306 carry? Carried.

Government motion 238.

Mr. Arthur Potts: I move that subsections 307(4) and (5) of the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be struck out.

The Chair (Mr. Shafiq Qadri): Comments on 238? Ms. Martow.

Mrs. Gila Martow: This seems to be removing some sections dealing with health information, and I'm wondering if there's a reason that they need to be removed. Is it that the government thinks so, or the ministry staff think so, or was it somehow that something was put in another section of the bill, so then they need to remove it from this section?

Mr. Arthur Potts: I'm happy to take that. Essentially, we're taking out references to sections of other acts, particularly the Personal Health Information Protection Act, and we're embodying the language specifically in the act now. It just makes it clearer.

Mrs. Gila Martow: Right. So that long previous amendment that you read, when we all tried to stay awake, was actually putting right in from the health act the actual language of that section, as opposed to just referring somehow?

Mr. Arthur Potts: Exactly.

The Chair (Mr. Shafiq Qadri): We'll proceed, then, to the vote, if there are no comments. Government motion 238: All in favour? Those opposed? Motion 238 is carried.

Shall section 307, as amended, carry? Carried.

Government motion 239.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Prohibitions, Immunity and Offences":

"Response of commissioner

"307.1(1) Upon receiving a complaint made under this part, the commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

"(a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject matter of the complaint;

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"(b) require the complainant to try to effect a settlement, within the time period that the commissioner specifies, with the person about which the complaint is made; or

"(c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the commissioner specifies, between the complainant and the person about which the complaint is made.

"Dealings with prejudice

"(2) If the commissioner takes an action described in clause (1)(b) or (c) but no settlement is effected within the time period specified,

"(a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this part;

"(b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this part; and

"(c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 307.4, unless all parties expressly consent.

"Commissioner's review

"(3) If the commissioner does not take an action described in clause (1)(b) or (c) or if the commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the commissioner may review the subject matter of a complaint made under this part if satisfied that there are reasonable grounds to do so.

"No review

"(4) The commissioner may decide not to review the subject matter of the complaint for whatever reason the commissioner considers proper, including if satisfied that,

"(a) the person about which the complaint is made has responded adequately to the complaint;

"(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this part;

"(c) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

"(d) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or

"(e) the complaint is frivolous or vexatious or is made in bad faith.

"Notice

"(5) Upon deciding not to review the subject matter of a complaint, the commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision.

"Same

"(6) Upon deciding to review the subject matter of a complaint, the commissioner shall give notice of the decision to the person about whom the complaint is made."

The Chair (Mr. Shafiq Qadri): Mr. Potts, I need you to read the heading "Dealings without prejudice" again.

Mr. Arthur Potts: "Dealings without prejudice".

The Chair (Mr. Shafiq Qadri): Excellent.

Any further comments on government motion 239? Seeing none, we'll proceed to the vote. Those in favour of government motion 239? Those opposed? Government motion 239 carries.

Government motion 240.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the

bill, be amended by adding the following section before the heading “Prohibitions, Immunity and Offences”:

“Commissioner’s self-initiated review

“307.2(1) The commissioner may, on the commissioner’s own initiative, conduct a review of any matter if the commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this part or the regulations and that the subject matter of the review relates to the contravention.

“Notice

“(2) Upon deciding to conduct a review under this section, the commissioner shall give notice of the decision to every person whose activities are being reviewed.”

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: I’m going to try to put my comments together for the next, I don’t know how many it is—240, 246 is still “commissioner,” 247 is still “commissioner,” 248. There have been bills that have been smaller than just this part on the commissioner. One of them is about five pages long. I think 242 goes—how many pages is it here? It’s four and a half pages.

So my question is this: Was the commissioner consulted before we wrote this entire act?

Interjections.

Mrs. Gila Martow: I’m wondering how it was missed. To tell you the truth, when you see a problem, sometimes it just makes you nervous. Instead of feeling confident—“Wow, look at all these changes. Somebody really went over this and caught everything and fixed everything”—I’m coming at it I guess from my medical background, and I say, “Wow. There’s smoke; there’s fire.” If there were problems, well, there are probably more problems. So what else did we miss in all this?

I get a little concerned when you see so many huge additions. This is, as I said before—and I’m sorry that I’m repeating myself again, but when I first got elected and it was explained to me how it works in clause-by-clause—it was a bit of a learning curve to understand how laws get passed—I was told that sometimes there are some significant amendments, but mostly it’s just supposed to be tweaking. Because I was really afraid that I was going to have this huge responsibility and come in as a newly elected person and they sent me in the first week to sit on committee and talk about things that I really had no background on in my life. I felt it was a big responsibility, and they said, “Don’t worry. It’s usually very minor things that we have to tweak in the bill.”

So just this whole section—and I see somebody is here to tell us about why we have pages and pages and pages about the commissioner. I understand that it’s to allow leeway for the commissioner to conduct reviews, then it’s another one to give even more leeway, and then wow—I wrote “wow” here—a huge addition dealing with reviews by the commissioner. Then, it continues with additional leeway for the commissioner.

Why was this missed, I guess?

Ms. Anne Premi: Anne Premi from the Ministry of Children and Youth Services again.

These motions, 238 to 251, as you’ve pointed out, pertain to the Information and Privacy Commissioner’s role, powers and processes in overseeing aspects of part X. They weren’t missed. For legislative efficiency purposes, the intent was to import provisions of PHIPA into our act. The only change here is that we’ve moved the actual wording, rather than just referring to the provisions.

So there are actually no changes, with one tiny small change in 247. It’s the exact same content. We’ve just simply moved the actual wording into the act. These were on recommendations of both PACY and the IPC. It makes it easier to read. It makes it more transparent. It really gets rid of the need to have different pieces of legislation going at the same time. But they’re not new. They were just referred to, rather than imported.

That’s the only difference, and yes, these were all discussed with the Information and Privacy Commissioner.

Mrs. Gila Martow: Okay.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Mike Colle: Thank you for that simple explanation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. Any further comments on government motion 240? Mr. McDonell.

Interjections.

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

Mr. Jim McDonell: I guess just in line with—we’re somewhat surprised at the changes because this bill has been a long time coming. The report that came out on this that was so critical is years old. We see this bill somewhat definitely looking like, after years of waiting, it’s being rushed through. I’ve never seen a bill—I’ve seen another bill this year where the government rushed through with 150 amendments, but this one certainly killed that record by a long shot. As my colleague says, it really makes you wonder.

Were you listening or did you review the report or what happened here? Because these are huge additions. Unfortunately, a lot of people haven’t been able to review this because these changes are all after the deputations, so it is a surprise and something that I hope we don’t see very often from the government.

I guess we’ll soldier through it.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 240? If none, we’ll proceed to the vote.

Those in favour of government motion 240? Those opposed? Motion 240 carries.

Motion 241.

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Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Prohibitions, Immunity and Offences”:

“Conduct of commissioner’s review

“307.3(1) In conducting a review under section 307.1 or 307.2, the commissioner may make the rules of

procedure that the commissioner considers necessary and the Statutory Powers Procedure Act does not apply to the review.

“Evidence

“(2) In conducting a review under section 307.1 or 307.2, the commissioner may receive and accept any evidence and other information that the commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.”

The Chair (Mr. Shafiq Qadri): Any comments? If none, we’ll proceed to the vote. Those in favour of government motion 241? Opposed? Motion 241 carries.

Motion 242.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Prohibitions, Immunity and Offences”:

“Inspection powers

“307.4(1) In conducting a review under section 307.1 or 307.2, the commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

“(a) the commissioner has reasonable grounds to believe that,

“(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject matter of the complaint or the review, as the case may be, and

“(ii) the premises contains books, records or other documents relevant to the subject matter of the complaint or the review, as the case may be; and

“(b) the commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this part or the regulations.

“Review powers

“(2) In conducting a review under section 307.1 or 307.2, the commissioner may,

“(a) demand the production of any books, records or other documents relevant to the subject matter of the review or copies of extracts from the books, records or other documents;

“(b) inquire into all information, records, information practices of a service provider and other matters that are relevant to the subject matter of the review;

“(c) demand the production for inspection of anything described in clause (b);

“(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject matter of the review; or

“(e) on the premises that the commissioner has entered, review or copy any books, records or documents that a person produces to the commissioner, if the commissioner pays the reasonable cost recovery fee that the service provider or person being reviewed may charge.

“Entry to dwellings

“(3) The commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

“Search warrants

“(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 307.1 or 307.2, the justice of the peace may issue a warrant authorizing the entry by a person named in the warrant.

“Time and manner for entry

“(5) The commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with services that are being provided to any person on the premises at the time of entry.

“No obstruction

“(6) No person shall obstruct the commissioner who is exercising powers under this section or provide the commissioner with false or misleading information.

“Written demand

“(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

“Obligation to assist

“(8) If the commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the commissioner and, at the request of the commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

“Removal of documents

“(9) If a person produces books, records or other documents to the commissioner, other than those needed for the current provision of services to any person, the commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the commissioner is not able to review and copy them on the premises that the commissioner has entered.

“Return of documents

“(10) The commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall promptly after the reviewing or copying return the documents to the person who produced them.

“Admissibility of copies

“(11) A copy certified by the commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

“Answers under oath

“(12) In conducting a review under section 307.1 or 307.2, the commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the commissioner and compel them to give oral or written evidence on oath or affirmation.

“Inspection of record without consent

“(13) Despite sections (2) and (12), the commissioner shall not inspect a record of, require evidence of, or inquire into, personal information without the consent of the individual to whom it relates, unless,

“(a) the commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual’s consent in the circumstances; and

“(b) the commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the commissioner’s determination under clause (a) together with brief written reasons and any restrictions and conditions that the commissioner has specified.

“Limitation on delegation

“(14) Despite subsection 307.11(1), the power to make a determination under clause (13)(a) and to approve the brief written reasons under clause (13)(b) may not be delegated except to an assistant commissioner.

“Document privileged

“(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court.

“Protection

“(16) Except on the trial of a person for perjury in respect of the person’s sworn testimony, no statement made or answer given by that or any other person in the course of a review by the commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the commissioner shall be given against any person.

“Protection under federal act

“(17) The commissioner shall inform a person giving a statement or answer in the course of a review by the commissioner of the person’s right to object to answer any question under section 5 of the Canada Evidence Act.

“Representations

“(18) The commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the commissioner.

“Representative

“(19) A person who is given an opportunity to make representations to the commissioner may be represented by a lawyer or another person.

“Access to representations

“(20) The commissioner may permit a person to be present during the representations that another person makes to the commissioner or to have access to them unless doing so would reveal,

“(a) the substance of a record of personal information, for which a service provider claims to be entitled to refuse a request for access made under section 304; or

“(b) personal information to which an individual is not entitled to request access under section 304.

“Proof of appointment

“(21) If the commissioner or an assistant commissioner has delegated their powers under this section to an officer or employee of the commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the commissioner or assistant commissioner, as the case may be.”

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Potts. I need you to read the first sentence of so of “Removal of documents,” page 3.

Mr. Arthur Potts: “Return of documents” (10)?

The Chair (Mr. Shafiq Qadri): “Removal of documents,” (9), actually.

Mr. Arthur Potts: “Removal of documents

“(9) If a person produces books, records and other documents to the commissioner, other than those”—

The Chair (Mr. Shafiq Qadri): Thank you. And also, at the bottom, (13).

Mr. Arthur Potts: Is it “setting out the commissioner’s determination under clause (a)”?

The Chair (Mr. Shafiq Qadri): No, where it says “Inspection of record.”

Mr. Arthur Potts: Okay.

“(13) Despite subsections (2) and (12), the commissioner”—

The Chair (Mr. Shafiq Qadri): Thank you. Comments on government motion 242?

Mr. McDonell.

Mr. Jim McDonell: Just because the vote’s coming up, can we take a 20-minute recess? You’re going to have to take it anyway, I’m sure.

The Chair (Mr. Shafiq Qadri): Well advised. We’re in a 20-minute recess until the vote occurs. Thank you.

The committee recessed from 1600 to 1621.

The Chair (Mr. Shafiq Qadri): Thanks, colleagues; we’ll reconvene. I believe we’re now on government motion 242. It’s already been read into the record. Now, questions and comments on government motion 242, unless we can proceed to the vote? Any comments? If none, we’ll—

Mrs. Gila Martow: Yes.

The Chair (Mr. Shafiq Qadri): Yes, Ms. Martow.

Mrs. Gila Martow: Because we had a recess, maybe he can read it again.

Laughter.

Mr. Mike Colle: You’re being sarcastic.

Mrs. Gila Martow: I am. You see, at least people can tell when I’m being sarcastic.

The Chair (Mr. Shafiq Qadri): Those in favour of government motion 242. If any, those opposed? Motion 242 carries.

Government motion 243.

Mr. Arthur Potts: Motion 243, here it goes: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding

the following section before the heading “Prohibitions, Immunity and Offences”:

“Powers of commissioner

“307.5(1) After conducting a review under section 307.1 or 307.2, the commissioner may,

“(a) if the review relates to a complaint into a request by an individual under subsection 304(1) for access to a record of personal information, make an order directing the service provider about whom the complaint was made to grant the individual access to the requested record;

“(b) if the review relates to a complaint into a request by an individual under subsection 306(2) for correction of a record of personal information, make an order directing the service provider about whom a complaint was made to make the requested correction;

“(c) make an order directing any person whose activities the commissioner reviewed to perform a duty imposed by this part or the regulations;

“(d) make an order directing any person whose activities the commissioner reviewed to cease collecting, using or disclosing personal information if the commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this part or the regulations or an agreement entered into under this part;

“(e) make an order directing any person whose activities the commissioner reviewed to dispose of records of personal information that the commissioner determines the person collected, used or disclosed in contravention of this part or the regulations or an agreement entered into under this part but only if the disposal of the records is not reasonably expected to adversely affect the provision of services to an individual;

“(f) make an order directing any service provider whose activities the commissioner reviewed to change, cease or not implement any information practices specified by the commissioner, if the commissioner determines that the information practices contravene this part or the regulations;

“(g) make an order directing any service provider whose activities the commissioner reviewed to implement information practices specified by the commissioner, if the commissioner determines that the information practices are reasonably necessary in order to achieve compliance with this part and the regulations;

“(h) make an order directing any person who is an agent or employee of a service provider, whose activities the commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the commissioner considers that it is necessary to make the order against the agent or employee to ensure that the service provider will comply with the order made against the service provider; or

“(i) make comments and recommendations on the privacy implications of any matter that is the subject of the review.

“Terms of order

“(2) An order that the commissioner makes under subsection (1) may contain the terms that the commissioner considers appropriate.

“Copy of order, etc.

“(3) Upon making comments, recommendations or an order under subsection (1), the commissioner shall provide a copy of them, including reasons for any order made, to,

“(a) the complainant and the person about whom the complaint was made, if the commissioner made the comments, recommendations or order after conducting a review under section 307.1 of a complaint;

“(b) the person whose activities the commissioner reviewed, if the commissioner made the comments, recommendations or order after conducting a review under section 307.2;

“(c) all other persons to whom the order is directed;

“(d) the body or bodies that are legally entitled to regulate or review the activities of a service provider directed in the order or to whom the comments or recommendations relate; and

“(e) any other person whom the commissioner considers appropriate.

“No order

“(4) If, after conducting a review under sections 307.1 or 307.2, the commissioner does not make an order under subsection (1), the commissioner shall give the complainant, if any, and the person whose activities the commissioner reviewed a notice that sets out the commissioner’s reasons for not making an order.”

The Chair (Mr. Shafiq Qaadri): Miss Taylor.

Miss Monique Taylor: Chair, I have a request and would like to have the information commissioner come before us once again. There has got to be close to 30 amendments to this section. We did have him here previously. He was able to state his case. He was unhappy with it, and we should be able to ask questions to see if he is satisfied with what’s before us now. These are serious changes that are happening to a critical part of this bill, and I think we should have the ability to have him come before us again, to make sure that he’s satisfied and that we’re satisfied with the changes that are happening to such a great extent.

The Chair (Mr. Shafiq Qaadri): Procedurally, to honour your wishes, we’ll need to dispose of this government motion 243 and vote upon it.

Miss Monique Taylor: Okay.

The Chair (Mr. Shafiq Qaadri): Then you’ll need to provide your request in writing to the committee before we proceed.

Miss Monique Taylor: Thank you.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on government motion 243? Seeing none, we’ll proceed to the vote. Those in favour of government motion 243? Those opposed? Motion 243 carries.

We’ll now proceed to government motion 244, and of course we await your motion in writing, which will need to be copied and distributed.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading “Prohibitions, Immunity and Offences”:

“Appeal of order

“307.6(1) A person affected by an order of the commissioner made under any of clauses 307.5(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

“Certificate of commissioner

“(2) In an appeal under this section, the commissioner shall certify to the Divisional Court,

“(a) the order and a statement of the commissioner’s reasons for making the order;

“(b) the record of all hearings that the commissioner has held in conducting the review on which the order is based;

“(c) all written representations that the commissioner received before making the order; and

“(d) all other material that the commissioner considers is relevant to the appeal.

“Confidentiality of information

“(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

“Court order

“(4) On hearing an appeal under this section, the court may, by order,

“(a) direct the commissioner to make the decisions and to do the acts that the commissioner is authorized to do under this part and that the court considers proper; and

“(b) if necessary, vary or set aside the commissioner’s order.

“Compliance by commissioner

“(5) The commissioner shall comply with the court’s order.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 244? If there are none, we’ll proceed to the vote. Those in favour of government motion 244? Those opposed? Government motion 244 carries.

Five-minute recess.

The committee recessed from 1630 to 1639.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Miss Taylor has a motion before the floor which, I now understand, has been distributed in writing. Miss Taylor, you have the floor.

Miss Monique Taylor: Thank you, Chair. I move that we postpone further clause-by-clause consideration of Bill 89 and invite the Information and Privacy Commissioner to appear before the committee to discuss changes to Bill 89.

As I said previously, Chair, there have been significant changes that have happened through amendments. When the information commissioner was here previously,

through deputations, he had concerns. We know that the amendments had already been written up and were already done before the deputations. Things happened so quickly that there wasn’t possibly time for all of these amendments to happen within that period. So I think we should have him back again.

I know the government members will want to say that I’m trying to hold the process up, but I’ve actually been working to push the process along. I’ve withdrawn several motions that just weren’t necessary anymore; I didn’t read them in. So it’s not that at all. I just really think that this process, and especially—all of this information and privacy stuff we know has been a major problem in the past. To ensure that we have public trust on these matters, that we have a document that actually reflects what the Information and Privacy Commissioner would like to see, it’s important that he has an opportunity to come before us and that we have an opportunity to ask him questions about all these changes to ensure that we get it right.

We know that there is no trust in, say, children’s aid societies by parents and through so many of our sectors. To put trust back into the public and to ensure that they can trust in this document before us, I think it’s important that the commissioner has the ability—and we have the ability to question him here on this new document.

The Chair (Mr. Shafiq Qaadri): Any further comments or questions? Mr. Potts.

Mr. Arthur Potts: Just quickly, I appreciate the intention. The reality is that there are a lot of amendments. Most are technical in nature. The ones that aren’t technical, the really substantive ones, are things that we learned over the course of public hearings and ongoing conversations with both the Information and Privacy Commissioner and the youth advocate, and they’re respected. I think this is actually showing that the process is working really well. We’ve brought in those motions.

We’ll be voting against it. He has been before us. You have a chance to go meet with him, talk with him about these things and make your arguments during third reading. I would encourage you to do so.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: I said it before. It’s not just the Information and Privacy Commissioner; I’m concerned that there are others as well who, whether this is moving parts of other acts into this act—it’s nothing that substantial, people from the ministry seem to feel.

It doesn’t make sense to me that in clause-by-clause, we’re moving in these vast amounts of sections in the bill and not at least getting some in-depth opinion from somebody who really understands. Speaking as somebody who doesn’t have a law degree, I’m fairly sure I understand a lot of the stuff, but this is really tough. You need to have the expertise to do things like—you know, it’s not just saying things; it’s saying that if in this section and that section, if the order was made under any of the clauses, section 1 and (c) and (h)—I’m looking forward at the next amendment that we’re going to be reading. How does this affect privacy? What concerns should youth aging out of care have with some of this stuff?

We can't just send them these amendments and say, "Hey, this is what we think it means." They certainly can't read the stuff. I think it's a bit of irony that the whole preamble and the whole intent of the bill—which wasn't really followed through on that well, so that's why we're seeing some of the amendments—is to speak to children and youth in language that they understand, and some of this is not in language that anybody can understand, unless you're a lawyer.

Maybe if the government would have emailed us some more concrete explanations of why we're seeing these huge amendments and why it wasn't initially realized that they were going to have to be put in. We're hearing all the reasoning behind it, but really, when it comes down to it, we have so many people working on the bill who have legal expertise that I would have thought that we would have known that this needed to be done.

We're not really getting concrete explanations. I do agree with the member from the NDP to have the Information and Privacy Commissioner come back so that we can ask for some clarification and their opinion on some of this that concerns them. You have to almost wonder: If you look back to what government did just even 50 years ago, we didn't have all of these departments and commissioners and things like that. It's gotten quite complicated. But on the other hand, we have people with expertise, and so I can't imagine why we wouldn't want to use their expertise. What's the point of having them if we're not able to hear their concerns?

The Chair (Mr. Shafiq Qaadri): Any further comments on the motion before us? Ms. Kiwala.

Ms. Sophie Kiwala: Just very briefly, again, I want to state that the amendment removes references to the Personal Health Information Protection Act, 2004, and particular section numbers, and instead includes actual wording as it appears in PHIPA. These amendments were recommended by the IPC. They've been done to add transparency, improve clarity and avoid the need to reference multiple pieces of legislation to understand the principles.

You're saying: What's the point of having all of these experts if we're not using them? Well, we did use them. We have responded to them and we have acted. What we're seeing and reading is a result of acting on the advice of the IPC.

The Chair (Mr. Shafiq Qaadri): Ms. Martow—actually, it was Miss Taylor first and then Ms. Martow.

Miss Monique Taylor: This isn't one or two amendments; this is close to 30. If I were to actually count them, it's close to 30 amendments over a very important section.

The government claimed that they consulted before the bill was written, and yet the Information and Privacy Commissioner was very clear that he wasn't happy. I think not only do we have a right, but he has a right to at least put his stand on the record and to just put some public trust into the matter that clearly isn't there. Rewriting the entire section through clause-by-clause doesn't do anything to lead to public trust.

I think we can have him come in very quickly and just have his say on the first thing of our next day, and we haven't missed that much time to ensure that we get it done. This isn't about holding up the process; this is about ensuring public trust in the process and that we hear from the commissioner and not from the government on whether they think these changes are reflective of what the officers have said. Because quite clearly they have already told us that once, and quite clearly that is not the fact, or else we wouldn't have 30 amendments in front of us.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: To recap what the member next to me just said, we were told that people were consulted. They came to the hearings. Apparently they weren't consulted as much as we were told. Now we're being told that they were consulted after the hearings and that's why we have all these amendments, because they were consulted.

I would like to take the government's word for that, that this is exactly and it's everything—that the Information and Privacy Commissioner has absolutely no concerns with any part of the bill as it's written now, with all the new amendments. But personally, I'd like to either have him come and present so that we can ask some questions, or—

Miss Monique Taylor: I can talk for an hour.

Mrs. Gila Martow: Or you can talk for an hour.

The government knew that there are pages and pages of amendments. At the minimum, it would have been nice if we were sent a letter from the Information and Privacy Commissioner stating that this is exactly what they asked for and everything is on the up and up.

It's a little disconcerting. As I said before, I feel responsible. I really do feel responsible. I realize I'm in opposition, but I think that it's my job to raise concerns. If there are problems down the road and I just sat here and let it all go through and didn't raise any concerns, then I don't think I'm doing my job and I should go back to my previous career.

1650

The Chair (Mr. Shafiq Qaadri): Miss Taylor.

Miss Monique Taylor: I just want to respond to what the member from Beaches–East York stated, that we can talk to the commissioner after this process is done and then talk about it in third reading. That's too late. That's too late to make changes. That's too late to hear from the information commissioner about whether this is correct and whether this reflects what he and the advocate wanted. It would really take such a small amount of time to have him come before us, to reassure us that this is correct.

The government has stated time and time again that they want to make sure that they get this bill right, that this isn't a small drop in the bucket. This is big legislation that covers an entire act. By not just sparing half an hour at most for the information commissioner to come before us again is really, I think, not doing our due diligence and not making sure that we get it right.

If it was one or two amendments, I wouldn't even be speaking on this matter, but with close to 30 amendments—on either side of 30—it's just way too big to be able to just pass through, and it's not doing our due diligence as opposition and making sure that it's correct. Third reading is too late. We can't change it once that happens.

And I'm sure the member from Beaches–East York wants to get this bill right—correctly—also, and so allowing the information commissioner is the right thing to do.

The Chair (Mr. Shafiq Qaadri): Further comments before we proceed with the vote on Miss Taylor's NDP motion?

Mrs. Gila Martow: I just have a comment.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. Martow?

Mrs. Gila Martow: My comment is that my partner is up there on the TV. That's my comment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Martow. We'll now proceed to the vote. Those in favour of the handwritten and distributed NDP motion?

Miss Monique Taylor: Oh, can I have a recorded vote, please?

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

Ayes

Martow, Taylor.

Nays

Colle, Dong, Kiwala, Potts.

The Chair (Mr. Shafiq Qaadri): The motion falls. We'll now proceed to government motion 245.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Prohibitions, Immunity and Offences":

"Enforcement of order

"307.7 An order made by the commissioner under this part that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 245? If not, we'll proceed to the vote. Those in favour of government motion 245? Those opposed? Motion 245 carries.

Government motion 246.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Prohibitions, Immunity and Offences":

"Further order of commissioner

"307.8(1) After conducting a review under section 307.1 or 307.2 and making an order under subsection 307.5(1), the commissioner may rescind or vary the order

or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

"Circumstances

"(2) The commissioner may exercise the powers described in subsection (1) even if the order that the commissioner rescinds or varies has been filed with the Superior Court of Justice under section 307.7.

"Copy of order, etc.

"(3) Upon making a further order under subsection (1), the commissioner shall provide a copy of it to the persons described in clauses 307.5(3)(a) to (e) and shall include with the copy a notice setting out,

"(a) the commissioner's reasons for making the order; and

"(b) if the order was made under any of clauses 307.5(1)(c) to (h), a statement that the persons affected by the order have the right to appeal described in subsection (4).

"Appeal

"(4) A person affected by an order that the commissioner rescinds, varies or makes under any of clauses 307.5(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 307.6(2) to (5) apply to the appeal."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 246? Miss Taylor.

Miss Monique Taylor: I'm questioning the material change, because when we talked about material change earlier, MPP Rosiers—

Mrs. Gila Martow: Des Rosiers.

Miss Monique Taylor: Des Rosiers; sorry. She talked about how "material change" was much too broad, and that it just didn't make sense. Yet, here we have "material change" within this motion. Again, it's really unfortunate, I think, that the information commissioner—this would be a question that I would love to ask him, to ensure that we have trust in what's happening with all these changes to information and privacy.

Maybe someone can come and tell me what "material change" actually means.

Ms. Anne Premi: Hi. Anne Premi again, from the Ministry of Children and Youth Services. This is actually imported directly out of PHIPA, so the Information and Privacy Commissioner is already working with this wording. This was not flagged to us as being problematic with regard to him being able to esteem whether there's a material change or not.

Miss Monique Taylor: What's the definition of "material change"?

Ms. Anne Premi: It's not provided here, but as far as I understand it, it's left to discretion. If he's satisfied that there's a material change, he can then review. That's basically what it means. But again, just to reiterate, it's

taken directly out of PHIPA, as are all of these provisions.

The Chair (Mr. Shafiq Qaadri): Ms. Martow?

Mrs. Gila Martow: Again, in the effort of learning the language of bills and all that: It's very hard to learn from, say, a PowerPoint presentation. Usually you need to have some concrete interaction. You can't watch a video of surgery and then go do the surgery; you could be the most brilliant, talented person in the world, but we all know you have to go to what are called "wet labs" and actually learn how to do it, or do it under the supervision of somebody who knows how to do it.

What makes me nervous with all of this is that we're not able to ask for examples. We're not able to say, "Well, give us an example of a material change in the circumstances." Somebody who has worked in child welfare can say, "Well, here's case A, case B and case C. Under the old act, it was problematic; with this new act, the children's aid workers from the societies will be able to be more efficient, better protect that child, better protect other children and better protect workers in the home."

That's what I find problematic: We're just focused on the bill itself, and then when these amendments come up—I said it before—it's worrisome to me, because I don't work in the field. I sit here and I wonder what the children's aid societies are thinking of this. I wonder what the youth who aged out of care think of some of the changes. It doesn't sound like anybody has an example of something like a material change—I'm just using that because we're talking about this amendment right now.

Just because the commissioner doesn't find the wording problematic—what everybody brings to the table is a different perspective. A lot of times, people only care about—they'll accuse doctors of only worrying about malpractice and not caring enough about a patient. They worry that somebody is doing something that is not in the best interests of the public but it's to protect themselves from a lawsuit.

1700

I don't think it's our job as legislators to just worry about what one group thinks. I think that the whole recipe—everybody has to be protected. The number one people who have to be protected are the children and youth in care, and the workers who are working with the children and youth in care. That's obviously our focus here.

You have to wonder why we have opposition governments and why we have clause-by-clause if a simple thing like asking for an example of a material change in a specific case—nobody here who works in any of the ministries is able to say, "Well, I know of a case, and this was a material change. Ask the commissioner what he would consider to be that material change."

I just want it on the record that I find it a little bit nerve-racking that we're just plowing along. I certainly don't want to feel that in 10 years, there's a case in the headlines and some reporter writes, or some expert says, that because of a section of the bill, something slipped through the cracks.

We're here to try to anticipate all of the consequences and all of the problems. People being people, they sometimes use the law for the wrong purpose. It's not the spirit of the law. They're able to use the letter of the law to advance their cause, which might not be in the public's best interest.

The Chair (Mr. Shafiq Qaadri): Further comments on the government motion?

Miss Monique Taylor: I would like to take the committee back to NDP motion 225, which they voted against. It's a material change. What it was going to do was protect a youth's right to—if some material change had happened, then they would have to go back and get consent from that youth again. That was voted against.

I believe the member for Beaches–East York told me he was going to take the dean of the law university—whatever it was; not disrespectfully—that he was going to take her advice on this one because, "She would know when she told me that 'material change' was much too broad." So, it was much too broad to protect youth, but we can use the same language for the Information and Privacy Commissioner? How is this possible, that it's not good enough to protect our youth, to say that they get the right to have consent, but we can put the exact same wording, the exact same language, into this different part of the bill?

That is concerning, Chair. It just shows that this whole process has been rushed through so quickly that we are going to create a crisis for our children's ministry; that things are just going to happen because the legislation isn't correct.

We can't even protect our kids, but we can put the exact same wording into a different part of the legislation, because it's the government's motion, and it's going to pass. But everything we put through that's protecting the kids, with the exact same wording, is turned down. That's just unbelievable. It's absolutely unbelievable that they voted this down with the exact same wording to protect children, and yet they're passing it here and telling me, "Oh, no, it's normal. This is what the Information and Privacy Commissioner wants."

I wonder what he would have to say about this section of the bill. We will never know until it's too late, because they refused to let him come back to this committee and be questioned. Yet we have over 30 amendments before us that deal exactly with his expertise. And I'm just supposed to trust the government. I'm supposed to trust them that they did their due diligence when creating this bill and yet have brought forward 150 amendments—but trust them that they've got it right now.

I cannot strongly urge enough that we put some public trust into this matter, into this bill, and have the committee just adjourn for—we're only going to miss one hour. One hour—and I can talk out the entire hour, so you can listen to me talk or you can listen to the information commissioner talk for maybe five or 10 minutes. It would be, at most, 15 minutes to have him come back to just instill some public trust into this process.

This is a complete contradiction that's blatantly in front of us right here. This one protects kids, but we turn

it down. It goes against the preamble, because the preamble says that we're going to listen to children, that we're going to put faith in what they have to say, that we're going to hear them and that we're going to respect them. But if something changes in their life, "It's too bad if you've already given consent, because we're going to take it anyway, even if you don't agree to it now." That's exactly what the government turned down, in this proposal in NDP motion 225. Their member on the committee who is a lawyer told them that it's the right thing to do. Yet it's here in plain language for the Information and Privacy Commissioner. So I wonder what he would have to say about the exact same wording that they said was way too vague, that it didn't make sense for kids to have that, and now it's before them.

How about I call for a recess?

The Chair (Mr. Shafiq Qaadri): I'll need consent from the committee for that recess. Do we have consent for a recess?

Interjections: No.

The Chair (Mr. Shafiq Qaadri): No. We do not have consent.

Mrs. Gila Martow: You can ask for a recess before the vote.

The Chair (Mr. Shafiq Qaadri): Just to let you know, formally, if you want to, you can propose it and it will be voted on. But if you would consent, we can perhaps move on to the next government motion.

Interjection.

The Chair (Mr. Shafiq Qaadri): We're on 246. Any further comments on government motion 246? If not, then we'll proceed to the vote. Those in favour of government—

Miss Monique Taylor: Now may I ask for a recess?

The Chair (Mr. Shafiq Qaadri): Fine—

Miss Monique Taylor: I'd like to consult—

The Chair (Mr. Shafiq Qaadri): Yes, correct. You are welcome to a 20-minute recess.

The committee recessed from 1708 to 1728.

The Chair (Mr. Shafiq Qaadri): We now proceed immediately to the vote without further discussion on government motion 246. I would invite colleagues to please resume their seats. We are now considering and moving immediately to the vote on motion 246. Those in favour of government motion 246? Those opposed? Government motion 246 carries.

We'll consider now government motion 247.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Prohibitions, Immunity and Offences":

"Damages for breach of privacy

"307.9(1) If the commissioner has made an order under this part that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this part or the regulations.

"Same

"(2) If a person has been convicted of an offence under this part and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct.

"Damages for mental anguish

"(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award for mental anguish."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 247? Seeing none, we'll proceed to the vote. Those in favour of government motion 247? Those opposed? Government motion 247 carries.

Government motion 248.

Mr. Arthur Potts: I move that the Child, Youth and Family Services Act, 2016, as set out in schedule 1 to the bill, be amended by adding the following section before the heading "Prohibitions, Immunity and Offences":

"General powers of commissioner

"307.10 The commissioner may,

"(a) engage in or commission research into matters affecting the carrying out of the purposes of this part;

"(b) conduct public education programs and provide information concerning this part and the commissioner's role and activities;

"(c) receive representations from the public concerning the operation of this part;

"(d) on the request of a service provider, offer comments on the service provider's actual or proposed information practices;

"(e) assist in investigations and similar procedures conducted by a person who performs similar functions to the commissioner under the laws of Canada, except that in providing assistance, the commissioner shall not use or disclose information collected by or for the commissioner under this part; and

"(f) in appropriate circumstances, authorize the collection of personal information about an individual in a manner other than directly from the individual."

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 248? Ms. Martow.

Mrs. Gila Martow: I'm trying my best to pay attention, and I'm just wondering again—when we have deputations and hearings where people can give comments, I would expect that the amendments that come forward from all that are from community people who don't actually work with the government because those who work with the government knew that this bill was coming forward, and they wouldn't even have to be consulted. Their job is to consult with the government on any bill that can affect how they do their jobs. I just really would like an explanation—these changes seems fairly in depth—why it has to be put in the bill as an

amendment as opposed to having been in the original bill.

I look at it from the public's point of view where sometimes things are done by accident and then some smart person in government says, "We'll, gee, that worked out in our favour. We did it by accident, but it actually worked out better for us because we put it forward in an amendment, and this way nobody can come to the hearings and give deputations saying that they don't like it. So that saves us all that bother and trouble, and it just works out in our favour because we just put it forward as an amendment and then nobody has a chance to say too much about it and most people wouldn't know that that amendment was even going forward." Then the bill gets passed and somebody who read the original bill and thinks that we're only tweaking things here in clause-by-clause all of a sudden has a big surprise.

I'm not suggesting that that's the case obviously. I'm just saying it concerns me that we're even able to make substantial changes to a bill and not have to have public input again. I'm not saying that we shouldn't be able to; obviously things happen and you have to make some significant amendments to a bill. The staff and the ministries can't think of everything, but maybe when something is this significant—I just keep thinking that there have been bills that have been written and the entire bill doesn't have as much information as just the amendments that we're putting forward here.

I'm sure the commissioner is happy and has had input. Maybe it was a little later than we would have liked, but the commissioner had input, but what about all the children's aid societies: Did they have input? What about the indigenous communities? What about the youth who aged out of care?

I feel a little uncomfortable because I'm worried that I'm going to get a bunch of emails and phone calls, saying, "Why the heck did you allow this to happen?" Part of my job, I'm told, is that even if you think nobody's listening, put it on the record, so that you can stand by your words later on and say, "Well, I did raise concerns," and you can show that you raised the concerns.

I feel that I need to put that on the record. I apologize if I'm repeating myself, but—

Mr. Arthur Potts: Is that a filibuster?

Mrs. Gila Martow: It's a concern. It's a real concern.

The Chair (Mr. Shafiq Qaadri): Miss Taylor?

Miss Monique Taylor: Once again, this is another major amendment that is before us of the powers of the commissioner. Stakeholders—we have no idea what they would say. Why this was excluded from the original bill, I just simply can't understand.

I really urge the government to reconsider their position on allowing the commissioner to come before this committee, so that we have public trust in this matter. As I said previously, public trust is something that's lacking, not just with the government as a whole but with our children's aid societies and with our corrections facilities. We see children falling through the

cracks each and every day. When we have changes such as this happening on the fly through committee, it does nothing for the process. It does nothing to ensure that we're getting it right. It does nothing to instill public trust.

I just hope that the government will rethink their position on the motion that I put forward and bring the commissioner in front of us, so that we can instill some trust in this portion of the bill. It's a huge amount of changes to a very small section.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 248? Mr. Potts.

Mr. Arthur Potts: Just as staff very clearly explained, there are absolutely no substantive changes being made in these sections. We're simply taking out a reference to one act and putting the language in exactly as it is inside the act. It just provides clarity.

There are no changes; let's just be clear about that. When you talk about substantive changes, you really aren't understanding what has been happening here. Let's be very clear: no changes.

The Chair (Mr. Shafiq Qaadri): Miss Taylor, and then Ms. Martow.

Miss Monique Taylor: I don't claim to be a lawyer, Chair. No, I can't say that I understand all of the very detailed legislation, but that's why I trust the officers who are put before this House. Their job is to give us reference, to give us advice, to ensure that we get it right.

So it's not me who is causing the problem with the process. It's the government not allowing him to be the officer that he's appointed to be—that we pay him to be—to bring it forward.

It's concerning that this member just continues to say, "Trust me." They said, "Trust me" when they put the bill in front of this House in December. Then, when we had the deputations come before us, when we asked if they found their voice reflected in the bill, they said, "No."

Now the government member is telling me, "Trust me" again. How many times are you going to ask me to trust your process if we've heard very clearly—and we see this amount of changes before us?

No, I do not trust the word of the government to just get it right, because if I was to do that, we would have had it right already, when the bill was in front of us, and we wouldn't have 30 amendments to this very small section.

I would trust the Information and Privacy Commissioner if he was brought before us for a very small time, and the people of this province would trust his voice. That's his job. That's why we have him.

So I'm concerned, and I'm still requesting that he come before us.

The Chair (Mr. Shafiq Qaadri): Ms. Martow.

Mrs. Gila Martow: What I was trying to say is that people in the community, and even some of the child care workers and children who aged out—a lot of them took the time to read that original bill, which was surprising to me. That's why they were able to come and speak very specifically. If it says in the original bill to refer to

another act, they don't go and get that other act, unless they're really some kind of expert, and look at what the pointer, I call it—the pointer is pointing and saying “as it's written in” whatever act. They just assume it's some technical thing.

To tell you the truth, it's not very often when I see in a bill—referring to the language of whatever act. You just figure it's something fairly benign. Again, you have to be a little bit suspicious and say, “Gee, somebody could figure out that if there's something in that other act that's going to make people in the community not happy, we'll just do a pointer in the original and we'll say ‘referring to’ whatever act. Nobody bothers to go look. Then, we'll take the big section out and plunk it in—and maybe it is the section and maybe it isn't.” To tell you the truth, in my amendments, it didn't very clearly say, “This entire section was taken out of the act that we had a pointer for, and now we're moving it into the bill. Maybe there's a reason it had to be split up into however many amendments, and maybe there isn't a reason.” But it's a neat trick for somebody in government, I guess, to do it intentionally, if it keeps people from coming to the hearings and complaining about whatever that pointer was pointing to.

I'm not saying that's the case here; I'm just saying that it's concerning, because sometimes you see that people figure out how to beat the system; they find that loophole. I just don't feel that comfortable that this is how

we're supposed to be passing legislation—having a pointer in the original and then deciding: No, that's not good enough. Well, why wasn't it good enough? Why was it done as some kind of reference to another act—and that wasn't good enough that it had to actually be put in this act? There's no explanation coming forward. We're being told that that's what the Information and Privacy Commissioner wanted, but he or she—I remember it was a he, but I don't want to say “he”; maybe it's not. They're not here to explain it. And nobody here seems to be able to explain why, in the original bill, very competent people thought that was sufficient, and why the Information and Privacy Commissioner then decided that that wasn't sufficient and had to be strengthened, I assume, and put in the actual bill.

The Chair (Mr. Shafiq Qadri): Further comments on government motion 248, if any? None? We'll proceed, then, to the vote. Those in favour—

Miss Monique Taylor: Can I call a recess, please, Chair?

The Chair (Mr. Shafiq Qadri): For 20 minutes, I presume?

Miss Monique Taylor: Yes, please.

The Chair (Mr. Shafiq Qadri): That will take us beyond 6, which means that we will adjourn. We're adjourned.

The committee adjourned at 1744.

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Also taking part / Autres participants et participantes

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Mr. Peter Kiatipis, acting director, Child Welfare Secretariat,

Ministry of Children and Youth Services

Ms. Esther Levy, Director, Child Welfare Reform Project,

Ministry of Children and Youth Services

Ms. Melissa Phillips, counsel, legal services branch,

Ministry of Children and Youth Services

Ms. Anne Premi, Director, Strategic Information and Business Intelligence Branch,

Ministry of Children and Youth Services

Ms. Judy Switson, director, client services branch, service delivery division,

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Mr. Ralph Armstrong, legislative counsel

Ms. Pauline Rosenbaum, legislative counsel