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ISSN 1710-9442

Legislative Assembly  
of Ontario  
Second Session, 38<sup>th</sup> Parliament

Assemblée législative  
de l'Ontario  
Deuxième session, 38<sup>e</sup> législature

## **Official Report of Debates (Hansard)**

**Thursday 3 May 2007**

## **Journal des débats (Hansard)**

**Jeudi 3 mai 2007**

**Standing committee on  
justice policy**

Provincial Advocate for  
Children and Youth Act, 2007

**Comité permanent  
de la justice**

Loi de 2007 sur l'intervenant  
provincial en faveur des enfants  
et des jeunes

Chair: Lorenzo Berardinetti  
Clerk: Anne Stokes

Président : Lorenzo Berardinetti  
Greffière : Anne Stokes

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Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
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Téléphone, 416-325-7400; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 3 May 2007

Jeudi 3 mai 2007

*The committee met at 0905 in room 228.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Lorenzo Berardinetti):** Good morning and welcome to the standing committee on justice policy. I'm going to call the meeting to order. Before we start the clause-by-clause, we have a subcommittee report regarding Bill 198. I would ask for someone to read the report into the record and move its adoption, please.

**Mr. Bas Balkissoon (Scarborough–Rouge River):** I will do the honour. Your subcommittee considered on Monday, April 30, 2007, the method of proceeding on Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002, and to repeal the Water Transfer Control Act, and recommends the following, pursuant to the time allocation order of the House dated Tuesday, April 24, 2007:

(1) That the committee meet for the purpose of public hearings on Bill 198 in Toronto in the mornings and afternoons of May 9 and 10, 2007;

(2) That the deadline for those who wish to make an oral presentation on Bill 198 be 5 p.m. on Friday, May 4, 2007;

(3) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will distribute lists of those requesting to appear to the subcommittee members who will each provide the clerk with prioritized lists of those to schedule by 12 noon on Monday, May 7, 2007;

(4) That organizations and individuals appearing before the committee be given 10 minutes each in which to make their presentation;

(5) That an advertisement be placed for one day in the Toronto Star and also be placed on the Ont.Parl channel, the Legislative Assembly website and in a press release;

(6) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location;

(7) That the committee meet for clause-by-clause consideration of Bill 198 on Wednesday, May 16, 2007;

(8) That the amendments be received by the clerk by 12 noon on Monday, May 14, 2007;

(9) That the deadline for written submissions be the end of public hearings;

(10) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill;

(11) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable;

(12) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair;

(13) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Is there any debate?

**Ms. Andrea Horwath (Hamilton East):** I just want to say that I'm not on the subcommittee for my party. I don't know if this is exactly what was said. I just want to put that on the record. I'm not going to vote against it, because I really don't know, but I wasn't aware that we were going to be dealing with the subcommittee report, so I don't have any knowledge of what happened at that committee meeting.

**The Chair:** Any further debate?

I'll now put the question. All those in favour? Opposed? The motion carries.

PROVINCIAL ADVOCATE FOR  
CHILDREN AND YOUTH ACT, 2007  
LOI DE 2007 SUR L'INTERVENANT  
PROVINCIAL EN FAVEUR DES ENFANTS  
ET DES JEUNES

Consideration of Bill 165, An Act to establish and provide for the office of the Provincial Advocate for Children and Youth / Projet de loi 165, Loi visant à créer la charge d'intervenant provincial en faveur des enfants et des jeunes et à y pourvoir.

**The Chair:** We'll now start clause-by-clause on Bill 165. Members should have before them a package of motions that have been received in the office of the clerk. Are there any additional motions, comments or questions that members would like to table now? None.

The first motion is by the NDP. Ms. Horwath, could you please move your motion..

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

"Principles and purpose

“0.1(1) The following principles apply in this act:

“1. The purpose of advocacy for children and youth is to,

“i. ameliorate the vulnerability of children and youth who seek and receive services in the child and youth service and justice systems,

“ii. address the imbalance of power between children and youth and the organizations and persons that make decisions about their care,

“iii. acknowledge that children in the care of the state and institutions, young persons in the youth justice system, and children with complex special needs require effective advocacy to protect their rights, promote their views and preferences, ensure the quality of services that they receive and to help prevent their abuse,

“iv. further acknowledge that children with complex needs and Aboriginal children have special needs and require the coordination of multiple service providers, service sectors and ministries,

“v. recognize that children and youth require assistance to express their views and preferences in the context of the institutions providing service to them, and provide such assistance,

“vi. ensure that information about the rights of children and young persons is made available to children, young persons and their parents and caregivers;

“vii. promote the special rights and freedoms of children and youth including those in the Ontario Human Rights Code, Canadian Charter of Rights and Freedoms, and the United Nations Convention on the Rights of the Child;

“viii. promote the full participation and inclusion of children and youth in society.

“2. Advocacy for children and youth emphasizes,

“i. the essential human dignity and autonomy of children and youth,

“ii. the role of family as the primary source of nurturance and support for children and youth, to the extent possible, the participation of family in advocacy for children and youth,

“iii. equality for all children and youth and respect for diversity;

“iv. the least adversarial approach to finding solutions for children, youth and their families,

“v. the supportive role of natural advocates in the delivery of advocacy services.

“Principles

“(2) Without limiting the generality of subsection (1), the following principles apply in this act:

“1. Children, youth and families who are members of First Nations are entitled to receive advocacy services in a manner consistent with their distinctive culture.

“2. Children, youth and families in remote communities face unique barriers when seeking or receiving services in the child and youth service and justice systems.

“3. Children and youth who, by virtue of their special needs, pose an extraordinary challenge to ministries, agencies and service providers have a distinct need for advocacy services.

“4. The participation of affected children and youth in the work of the advocate enhances the credibility and effectiveness of the advocate.”

Did I get through it without any mistakes?

**0910**

**The Chair:** Perfect.

**Ms. Horwath:** Close. Very briefly, I know that both the Conservative critic and the government have amendments as well to cover off what we heard loud and clear during the hearings, which was that the bill was absent of any kind of statement of principles, preamble or context, and that everyone who made presentations in that regard thought that was not doing justice to this important piece of legislation for children and youth. This is our attempt to pull in most of what we heard in the hearings. I would suggest that it's the most comprehensive of the three motions, and I would ask that the government members consider supporting it. I hope that my colleague the other critic would support it as well.

**The Chair:** Thank you, Ms. Horwath.

*Interruption.*

**The Chair:** It's not my BlackBerry; it's someone's.

Is there any further debate on this motion?

**Mr. David Zimmer (Willowdale):** The government is not able to support this. We've got government motions 3 and 7, which cover the same territory. Our motions cover off the statement of principles and the matters raised by the NDP motion.

**Ms. Lisa MacLeod (Nepean–Carleton):** Just quickly, we were urged throughout the hearings to be more encompassing and not restrictive, so I will be supporting this motion.

**The Chair:** I will now put the question.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That amendment does not carry.

We'll move on to the second motion, which is a PC motion.

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

“Principles and purpose

“0.1(1) The following principles apply in this act:

“1. The purpose of advocacy for children and youth is to,

“i. ameliorate the vulnerability of children and youth who seek and receive services in the child and youth service systems,

“ii. address the imbalance of power between children and youth and the organizations and persons that make decisions about their care,

“iii. promote the rights of children and youth including those set out by the United Nations Convention on the Rights of the Child,

“iv. promote the full participation and inclusion of children and youth in society.

“Principles

“(2) Without limiting the generality of subsection (1), the following principles apply in this act:

“1. Children, youth and families who are members of First Nations are entitled to receive advocacy services in a manner consistent with their distinctive culture.

“2. Children, youth and families in remote communities face unique barriers when seeking or receiving services in the child and youth service and justice systems.

“3. Children and youth who, by virtue of their special needs, pose an extraordinary challenge to ministries, agencies and service providers have a distinct need for advocacy services.

“4. The participation of affected children and youth in the work of the advocate enhances the credibility and effectiveness of the advocate.”

Mr. Speaker, I recommend this. It was endorsed by—

**The Chair:** I’m not the Speaker yet; I’m just a Chair.

**Ms. MacLeod:** Sorry, Mr. Chair. The Conservative Party put this motion forward at the urging of the Canadian Foundation for Children, Youth and the Law. Bill 165 seeks to empower youth through the advocacy powers of the provincial advocate, and we think a preamble would encompass the overall aims of this legislation and acknowledge the special voice of children and youth in our province. I would urge my colleagues to support this resolution.

**The Chair:** Any further debate?

**Ms. Horwath:** I’m going to support this motion. Although the government does have a couple of amendments in, they are not as comprehensive as either the motion the government members just defeated or the motion that’s before us now. So I’ll be supporting this.

**Mr. Zimmer:** Government motions 3 and 7, which I referred to earlier, are a statement of purpose and principles which cover off the ground that the Conservative motion does.

**The Chair:** I’ll now put the question.

**Interjection:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to the third motion, which is a government motion.

**Mr. Zimmer:** You have the motion before you. I have an amendment to that motion, if I can do that first.

**The Chair:** An amendment to the motion here?

**Mr. Zimmer:** Yes.

**The Chair:** Okay.

**Mr. Zimmer:** I’ll read it out. We propose to further amend the text of government motion number 3 by amending clause (c) of the purpose statement to read: “educate children, youth and their caregivers regarding the rights of children and youth.”

The rationale here is that it’s a plain-language purpose statement. It’s going to help the readers, particularly children and youth, understand the role and work of the advocate and expresses the unique interests of First Nations children and those with special needs. We’ve developed this statement in consultation with the current advocate and groups of children she works with.

**The Chair:** Could I just ask you to read the motion with the addition?

**Mr. Zimmer:** I move that the bill be amended by adding the following section:

“Purpose

“0.1 The purpose of this act is to provide for the Provincial Advocate for Children and Youth as an independent officer of the Legislature to,

“(a) provide an independent voice for children and youth, including First Nations children and youth and children with special needs, by partnering with them to bring issues forward;

“(b) encourage communication and understanding between children and families and those who provide them with services; and

“(c) educate children and youth regarding their rights.”

**The Chair:** I’m sorry, but you made the change to (c). It reads differently now.

**Mr. Balkissoon:** You have to read the amendment to (c).

**The Chair:** You had an amendment to it. Could you just read (c) with the amendment.

**Mr. Zimmer:** The proposed amendment to (c) is “educate children, youth and their caregivers regarding the rights of children and youth.”

**The Chair:** Okay. Any discussion?

**Mr. Zimmer:** I’ve made my point.

**Ms. Horwath:** Just briefly, although this amendment is not as comprehensive as the one the New Democrats put forward nor the one the Conservatives put forward, I like the amendment to your motion, and although I’m not convinced that it covers all the bases, I will be supporting it.

**Ms. MacLeod:** I’d like to echo the comments of my colleague from the third party. I think it doesn’t encompass exactly what we were looking for, but it’s a start. At this point in the game, we’re going to support the government.

**0920**

**The Chair:** Thank you. Any further debate at all? None? Shall the motion carry? All those in favour? Opposed? Carried.

Let’s move on to number 4. It’s a PC motion.

**Ms. MacLeod:** I move that the definition of “advocacy” in subsection 1(1) of the bill be amended by striking out “or providing legal advice or legal representation.”

This was recommended by the Psychiatric Patient Advocate Office. They feel that limiting the scope of the advocate’s practice to non-legal advocacy may erode his or her effectiveness and the ability to make systemic changes. There may be times when it would be appropriate to pursue legal advocacy, such as a standing at a coroner’s inquest or intervention in cases that have the potential to impact children’s services by setting legal precedents.

Finally, the current definition of “advocacy” should not become a barrier or an obstacle for the advocate to work on behalf of these children.

**Ms. Horwath:** I realize that there was some discussion during committee about this particular issue. Unfortunately, I’m not going to be able to support the amendment. On the balance of issues, our current advocate convinced me that the issue around having the legal responsibilities was not something that she wanted or that she saw as being appropriate for her office. So I won’t be able to support it, unfortunately.

**Mr. Zimmer:** The government will not be able to support the Conservative motion here. I agree with the comments of the NDP critic on this matter.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

MacLeod.

#### Nays

Balkissoon, Horwath, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on then to number 5. It’s an NDP motion.

**Ms. Horwath:** I move that the definition of “youth” in subsection 1(1) of the bill be amended by adding “and includes, in the discretion of the advocate, a person over the age of 18 years who is receiving services from an agency referred to in section 13” at the end.

**The Chair:** Any discussion?

**Ms. Horwath:** The issue had come up that there are a number of youth who receive services and who are on extended care agreements. I think it’s appropriate that as long as they are still receiving supports from the crown, they should be in a position of having access to the advocate. I don’t think it hurts us to hear the voices of youth. Sometimes it may be that young people, as they mature, begin to gain the confidence of raising issues with the advocate that they may have not been able to raise when they were younger. I’m just encouraging us to consider the fact that young people who are still receiv-

ing services and who are on extended care agreements are actually able to access the advocate services.

**Ms. MacLeod:** I have a similar motion that we’ll be debating after this one, which essentially says the same thing and, I think, for the same reasons. We heard from children here who are still crown wards over the age of 18, who we still have to be protecting as a government and as a Legislature. I fully support the NDP motion.

**Mr. Zimmer:** This government is unable to support this amendment. The proposed definition of “youth” is inconsistent with the definition of “youth” in the Child and Family Services Act and the Ministry of Correctional Services Act. The new legislation must be consistent with and not affect provisions in other Ontario legislation. Extending services to those beyond 18 years of age would go beyond the scope of the advocate’s current mandate.

**Ms. Horwath:** Could I just ask legislative counsel, is it the case that we cannot add that at the discretion of the advocate within the context of this legislation, that we can’t change that to allow her to provide services to children over 18 because it doesn’t occur in other pieces of legislation?

**Ms. Sibylle Filion:** I think you’re asking me whether it would be beyond the scope of the bill to include that kind of definition. Is that the nature of your question?

**Ms. Horwath:** Yes. Is it the case that by including this definition, that somehow negatively affects or impacts other legislation by putting this—

**Mr. Zimmer:** Chair—

**Ms. Horwath:** I’m asking legislative counsel through the Chair.

**The Chair:** She’s just asking a question of counsel, and then if you want, you can answer.

**Ms. Filion:** I can’t speak really to other legislation. In terms of this legislation, whether it would be appropriate to bring a motion that might impact upon other legislation, you can do so; however, you can’t directly amend that other legislation. Is that an answer to your question?

**Ms. Horwath:** Well, I’m a little bit concerned because I’m hearing from the government that the reason they won’t consider this is because somehow it’s going to negatively impact other legislation that has the definition of “youth” which doesn’t include children over the age of 18. Our intent here is to say specific to this child and youth advocate that they can receive services if they are beyond the age of 18 and they’re still receiving services of the crown as crown wards. I’m a little bit frustrated because I want to do the right thing, and I thought the right thing was to include those young people. I certainly didn’t see bringing this motion forward—I wasn’t told it was out of order in terms of being inappropriate and inconsistent with other pieces of legislation.

**Ms. Filion:** I just need to clarify that. My role here is to point out what might be in order and out of order. What might be appropriate from a policy perspective from the government’s point of view is within their ambit.

**Ms. Horwath:** Thank you.

**The Chair:** Mr. Zimmer, did you want to make further comments?

**Mr. Zimmer:** No.

**The Chair:** Further debate? Then I'll put the question.

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on now to page 6, a PC motion.

**Ms. MacLeod:** I move that the definition of "youth" in subsection 1(1) of the bill be amended by adding "and includes, in the discretion of the advocate, 18 years of age or over who is receiving services under relevant legislation" at the end.

This obviously has been recommended by several people who appeared before us, including the Canadian Foundation for Children, Youth and the Law. The aim of the legislation is to focus on the rights of children, yet there should remain, at the discretion of the provincial advocate, the ability to advocate for children and youth for those who receive services beyond their 18th birthday, especially during the crucial transition to independence or to the receipt of adult services.

My wording is slightly different from the third party's wording and I think actually deals with the government's concern. Therefore, I look forward to their support.

**Mr. Zimmer:** This PC motion is in effect the same as the previous NDP motion. I made my comments on the record, and I repeat those comments.

**The Chair:** Thank you.

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 7, a government motion.

**Mr. Zimmer:** I move that section 1 of the bill be amended by adding the following subsection:

"Principles to be applied

"(3) In interpreting and applying this act, regard shall be had to the following principles:

1. The principles expressed in the United Nations Convention on the Rights of the Child.

2. The desirability of the office of the Provincial Advocate for Children and Youth being an exemplar for

meaningful participation of children and youth through all aspects of its advocacy services."

#### 0930

In plain language, what we're trying to do here is help guide the interpretation of the act. We want to follow those principles as expressed in the United Nations Convention on the Rights of Children and the office of the Provincial Advocate for Children and Youth should include practices of meaningful participation by children. That's the rationale here.

**Ms. MacLeod:** I'm going to support this government motion. I think it's essential that we have the United Nations Convention on the Rights of Children encompassed in this piece of legislation. I do want it on the record, though, that I would like it one step further. I believe that that province of Ontario needs a children's bill of rights. I think it's something that all three political parties in this Legislature could work on together.

**Ms. Horwath:** Because the government voted down both the NDP and the Conservative motions, we're left in the position of having to support this motion, even though we don't—or at least I don't—believe it's comprehensive enough. It is at least in some ways touching on the real important issues around the rights of the child and also the focus of the advocate's office in terms of ensuring that it really is a young persons' and young people's voice that comes through in all work that is done through that office.

**The Chair:** Further debate? I will now put the question. All those in favour of the motion? Opposed? That carries.

That ends our discussion on section 1. I'll now put the question. Shall section 1, as amended, carry? All those in favour? Opposed? That carries.

The next motion is on page 8, and it's an NDP motion.

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

"Ombudsman

"1.1. Without detracting from the powers of the advocate under this act, the Ombudsman appointed under the Ombudsman Act has full oversight over all services for children, including child welfare and youth justice."

If I could just make a quick comment, we all know that the Ombudsman sent correspondence to the committee. We all know that the Ombudsman made an effort to put out a press release about this issue. We all know that the Ombudsman and myself as well are very concerned—and we're all very concerned, or at least some of us are very concerned—that the work of the child advocate will only be strengthened and made more effective by having Ombudsman oversight over child welfare issues.

The bottom line is that this is an ongoing issue. The government claims to have taken care of it with the Child and Family Services Review Board through Bill 210. We all know that that is not the case. In fact, even the children's aid societies, off the record, at the public hearings acknowledged that that is not the case. Notwithstanding the government's claim that the Child and Family Ser-

vices Review Board decisions are able to be investigated by the Ombudsman, they simply are not. The bottom line is that if we're really going to do the right thing by children in this province, we need to have children's services able to be investigated by the Ombudsman.

**The Chair:** Before we go any further, I am just going to refer to Erskine, Beauchesne and Marleau. I've always wanted to do that, just like Peter Kormos does.

"It is an established principle of parliamentary procedure that an amendment is out of order"—so I'm going to have to rule this out of order—"if it is beyond the scope of the bill or beyond the scope of the clause under consideration.

"The scope of the bill that the House has agreed to by passing second reading of the bill, establishes the parameters of the bill that may be considered by a committee.

"Therefore, an amendment that deals with something that has not been proposed or considered within the scope of the bill after second reading is out of order.

"An amendment is also out of order if it seeks to amend a section of an act when that section is not open in the bill."

Unfortunately, I'm going to have to rule this out of order.

**Ms. MacLeod:** Mr. Chair, may I comment? Despite the fact that we will not be voting on this, I just wanted to add that I really think that there is a critical role in the province of Ontario for the Ombudsman to have investigatory powers here. I would have, if there were a vote, supported my colleague.

**The Chair:** We'll move on then to motion 9, an NDP motion.

**Ms. Horwath:** Hopefully you'll be nicer to me this time, Mr. Chair. I'm just kidding you.

I move that section 2 of the bill be struck out and the following substituted:

"Appointment

"2. The Legislative Assembly shall, by resolution made on the recommendation of a committee of the Legislative Assembly that includes equal representation from every party represented in the assembly, appoint a person as the Provincial Advocate for Children and Youth."

All this motion really does is formalize the process that takes place, in many cases, with our independent officers. I know the government prefers that cabinet make the appointment, but this is modelled after the British Columbia language. I can't recall now if it was legislative counsel or defence for children and youth that provided that language. Nonetheless, it says formally that a three-party committee with equal representation makes the recommendation to the assembly and the assembly then appoints the advocate.

**Mr. Zimmer:** The government is not able to support this. The current language in section 2 of the bill is consistent with the way all other officers of the Legislature are appointed. It's also the language recommended by the Clerk of the Legislative Assembly. An all-party committees is the standard practice in these matters.

**Ms. Horwath:** Just one remark: I acknowledge that that's the standard kind of practice. What this motion was trying to do was simply to formalize it, to actually enshrine it into some legislation so that we will always have that practice for this position.

**The Chair:** I'll now put the question.

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 10. This is a PC motion.

**Ms. MacLeod:** I move that section 2 of the bill be struck out and the following substituted:

"Appointment

"2. The Lieutenant Governor in Council shall, on the recommendation of a committee of the Legislative Assembly, appoint a person as the Provincial Advocate for Children and Youth."

I understand the government's rationale with the previous motion. I want to bring this in the context of actually spelling out how we will appoint this person in the Legislature, but this resolution is framed differently than the third party's, insofar as we don't explicitly state that we need to have equal representation. A committee such as this could actually make the decision. This was recommended by Defence for Children International.

The Premier and the Minister for Children and Youth Services both promised that the advocate would be selected through an all-party legislative committee and report directly to the Legislature, and Bill 165 should be amended to entrench within it a method of appointment that engages, I believe, all the political parties in the Legislature in the selection of this advocate. As my colleague from the third party mentioned, similar provisions are made in other provinces, including Newfoundland and Labrador, Saskatchewan and British Columbia. I'd urge my colleagues to support this, and I'll be calling for a recorded vote.

**Mr. Zimmer:** I would ask that my remarks on the previous NDP motion be repeated.

**Ms. Horwath:** Mr. Chair, although I respect and support the initiative of my colleague, I'm concerned about—we see what happens in these kinds of committees when the government of the day has the majority vote. The reason that New Democrats wanted to have it one member from each party was to make a clear statement that the advocate's position is so important that it cannot be politicized by a partisan process. Unfortunately, I'm not going to be able to support my colleague's amendment.

**Ms. MacLeod:** Recorded vote.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Horwath, Oraziotti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 11, an NDP motion. Ms. Horwath.

**0940**

**Ms. Horwath:** Members of the committee, there's an amendment to the motion, so I'll read the amendment first and then I'll read the amended motion. The amendment to the motion is on page 11:

“Qualifications

“(2) The advocate must be a person with significant experience in areas such as children’s mental health, child welfare, developmental services, youth justice....”

Basically we're striking out the words “two or more of the fields of” and inserting instead “areas such as.”

I thank the government for bringing forward that change to the motion so that it can be agreed upon and passed through the process.

I'll now go to the main motion:

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

“Qualifications

“(2) The advocate must be a person with significant experience in areas such as children’s mental health, child welfare, developmental services, youth justice, education and pediatric health services.”

Recorded vote, please.

**The Chair:** Mr. Zimmer, did you want to say something on this?

**Mr. Zimmer:** The government supports this motion.

**The Chair:** Ms. MacLeod?

**Ms. MacLeod:** I support the amended motion. I would not have supported the original because I thought it was a little exclusive. I think this is a very good balance and a great compromise from the government and the New Democrats, so I'll be supporting this motion.

**Ms. Horwath:** Mr. Chair, it was just brought to my attention that as you read the motion, in the very last sentence between the words “education” and “pediatric health services, the word “and” should perhaps be changed to “or.” That just makes it much more clear that any of these particular areas or any other would probably be appropriate. Do I need to read it again with the change?

**The Chair:** I think it's understood by all members of committee.

Did you want a recorded vote on this, Ms. Horwath?

**Ms. Horwath:** Sure.

**Mr. Zimmer:** Can we read the motion once more, just to make sure we don't have a grammatical or—

**Ms. Horwath:** Sure.

“Qualifications

“(2) The advocate must be a person with significant experience in areas such as children’s mental health, child welfare, developmental services, youth justice, education or pediatric health services.”

**Ayes**

Balkissoon, Horwath, MacLeod, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion carries.

We'll move on to page 12, a government motion.

**Mr. Zimmer:** I move that section 2 of the bill be amended by adding the following subsection:

“Transitional

“(2) The person who, immediately before the coming into force of this subsection, held the title of ‘chief advocate’ in the Office of Child and Family Service Advocacy continued under section 102 of the Child and Family Services Act shall be deemed to have been appointed as the advocate until an advocate is appointed under subsection (1).”

In plain language, this is a transitional provision that allows the chief advocate in the Office of Child and Family Service Advocacy to become the new advocate until such time as the Lieutenant Governor in Council appoints a new advocate.

**Ms. Horwath:** I support this government motion. I can't think of a person who would be more appropriate to transition us from the current situation to the independent office of the child advocate. If Ms. Finlay is prepared to do the job, I'm sure we're all prepared to support her at it.

**Ms. MacLeod:** The official opposition echoes the commitment by the New Democrats and the government. Of course we welcome her to her new job. I don't know if she knows what she's getting into.

**Ms. Horwath:** She doesn't.

**Ms. MacLeod:** Yes, she doesn't yet because we're not finished with the bill, but we welcome her and congratulate her. I'll be supporting the motion.

**Mr. Zimmer:** Recorded vote.

**Ayes**

Balkissoon, Horwath, MacLeod, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion carries.

Shall section 2, as amended, carry?

All those in favour? Opposed? That carries.

We'll move to page 13, an NDP motion.

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

“Deputy for First Nations

“2.1(1) The advocate shall have a deputy, to be known as the ‘deputy advocate for First Nations children located in the north,’ who shall,

“(a) be knowledgeable of the cultures, languages and customs of the First Nations peoples and their aboriginal and treaty rights;

“(b) be physically located in proximity to northern and remote First Nations communities; and

“(c) if possible, be of First Nations heritage.

“Other deputies

“(2) The advocate may appoint other deputies, as he or she sees fit.”

We heard from a number of deputants, particularly First Nations deputants, who made clear what we were already aware of, which is the overrepresentation of First Nations children in both the child welfare system and the youth justice system, and in the justice system overall. We’re very concerned that this deputy position be enshrined in the legislation, and that it not be left to some time in the possible future.

I was a little bit concerned, to be honest with you, in terms of setting the position as a deputy, but when I heard from First Nations communities themselves who said, “This is what we want. This is what we need. It’s unacceptable for the government to do anything less than that,” I agreed. That’s what this motion is here for.

**Mr. Zimmer:** The government is unable to support this. The government is supportive of the concept of a deputy advocate for First Nations, but the advocate, as an independent officer of the Legislature, must have the flexibility to structure the office in the way he or she sees fit.

**Ms. MacLeod:** I appreciate the comments by my colleague from the third party. Unfortunately, at this time I won’t be able to support this particular amendment, but later on I think we have a compromise amendment that hopefully all three parties will support.

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath.

#### Nays

Balkissoon, MacLeod, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to page 14. This is a PC motion.

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

“Adequate funding

“2.1 The office of the advocate shall be provided with adequate funding.”

This was recommended by several deputants. A review of child advocacy programs in Canada indicates that the Office of Child and Family Service Advocacy has the lowest budget per capita of any child advocacy program across the country. I think we have to make a statement here today, because I think the advocate must have sufficient funding in order to effectively advocate on behalf of our children and youth. I’ll be asking for a

recorded vote, and I hope I have the support of my colleagues.

**Mr. Zimmer:** The government is unable to support this. This is not a suitable legislative provision. The Board of Internal Economy is and will be responsible for reviewing and approving the budget of the Provincial Advocate for Children and Youth.

**Ms. Horwath:** We all saw the chart, provided by the legislative library research and information service, that shows very clearly that Ontario is at the back of the pack when it comes to investment in our child advocate’s office and our resources that are put into it. Although I understand the government’s position and understand that it probably doesn’t belong in the bill as a clause, I am going to support it only because I agree wholeheartedly with the comments of the critic for the Conservative Party. It’s important to get on the record anyway the expectation both opposition parties have that when this goes to BOIE, it’s going to be seriously considered to have a significant increase in resourcing to the office.

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on then to page 15. This is an NDP motion. Ms. Horwath.

**0950**

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

“Select committee for children and youth

“2.2 There is established, as a committee of the Legislative Assembly, a committee to be known as the Select committee for children and youth, which shall at least annually receive reports from the advocate and carry out other responsibilities regarding children and youth as shall be assigned to it by the assembly.”

Very briefly, members will recall that the advocate in her presentation, and in her written presentation as well, referred to the BC model whereby there’s a standing committee that deals with ongoing issues and ongoing matters that come up over time. It’s a legislative committee that’s a touchstone for the advocate to continue to do good work in the province, and she was supportive of that kind of model here.

I’m simply putting this motion forward to echo and support her call for a committee that is focused on the children of this province. In fact, in the news recently, members will know, particularly Toronto members, there have been all kinds of discussion that if you make your city a good place for children, then you’ve made a great city. Children’s issues are at the top of mind in many

areas across the world. In fact, there's a particular group called Livable City. I can recall that even five or six years ago, when I was on city council, the focus of that group, that was based out of California, was to make your city a child-friendly city and, by doing that, you have improved your community by leaps and bounds.

I believe that's a focus we need to take. I believe we need to get more focused on children's issues in the province. I believe the Premier himself, as well as the Minister of Children and Youth Services and the Minister of Community and Social Services—many of the ministers of the government have spoken, in fact many of the members on all sides have spoken, very eloquently in the Legislature about the importance of our children and that children are our future. We hear that kind of rhetoric on a constant basis.

This is an opportunity for us as a legislative body to bring forward a committee that actually proves that we really mean those words when we say them. I urge the members of the government and the opposition to support this motion. It really does put into place something that is tangible, that begins to say we mean it when we say those fanciful words in regard to our commitment to children's issues in the Legislature.

**Ms. MacLeod:** While I would have preferred a little more flexibility in the wording so that it could be decided upon by the discretion of the independent child advocate, I will be supporting this amendment simply because I think we heard loud and clear from the people we consulted that they believe a committee should assist the advocate. So I will be giving my support to this amendment.

**Ms. Horwath:** Recorded vote, please.

**The Chair:** One moment. Any further debate?

**Mr. Zimmer:** The government is unable to support this. It's the role of the Legislative Assembly to determine committee structures.

**The Chair:** A recorded vote has been asked for by Ms. Horwath.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on then to motion number 16, which is a PC motion.

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

"Emergency fund

"2.2 The funding for the office of the advocate shall include an emergency fund."

This was recommended by a lawyer in Toronto, Michael Cochrane from Ricketts, Harris LLP. He gave, I think, one of the better presentations during our consult-

ations. He just recommended that the advocate should have the funding to engage in on-the-spot remediation when encountering emergencies involving children, and I agree. I agree 100% and put this amendment forward, understanding the fact that this is Board of Internal Economy, but I think we could have a show of support here and direct the Board of Internal Economy to establish that.

**Mr. Zimmer:** The government does not support the motion. The Board of Internal Economy is responsible for reviewing and approving the budget, and emergency funding could be considered by the Board of Internal Economy.

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on then to motion number 17. It's a PC motion.

**Ms. MacLeod:** This is an amended motion, a compromise motion with the official opposition and the government, and I'm hoping the third party will support it as well. How do I do this? Do you want me to read the new, amended motion?

**The Chair:** You can read the amended motion, yes.

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

"Deputies

"2.3 The advocate may appoint deputies, including, without being limited to, deputies for youth justice, aboriginal youth and youth in the various geographic regions of Ontario, including youth in northern or remote communities."

We heard many times from the aboriginal community the need for a deputy advocate. We heard from the advocate herself. We heard from the Canadian Foundation for Children and Youth in Law. I believe that there are some children throughout the province who require special attention from the provincial advocate, and I think we need to protect them. We also heard from kids from my region in eastern Ontario who said it would be helpful if they had an advocate they could access. We heard from kids right across Ontario.

I think the wording of this amendment fits with the intent of my party, the third party and the government. I think the government is prepared to step up to the plate, so I'm just urging, on a recorded vote, that all parties support this amendment.

**Ms. Horwath:** I'm going to be supporting this motion, definitely. The thing that I'm a little bit concerned about, and I'm going to put it on the record again, is the fact that exists currently, that First Nations children are right now

to this day and, unfortunately, have been for some time overrepresented in the child welfare system, period.

I think it behooves us to actually set that out in legislation, not leave it to the hope that the BOIE might fund the advocate enough money to actually eventually appoint deputy advocates to be able to take care of that great need. That's my only concern, and I'm going to support it because the intent is supportable. But the reality, and we know the reality around here, is that unless the advocate gets the resources necessary to establish an office that's going to be able to do the job expected of it, that office is not going to be set up.

There's no indication with just this motion as it is that we're taking seriously our obligations and our responsibilities to our First Nations communities in acknowledging the realities of the horrible situations faced by their children. In fact, anybody who wasn't moved to absolute tears from some of the presentations that we had, not only on this bill but on Bill 210 as well, has to be a stone. It's absolutely horrifying. We talk about it from a statistical perspective often, but the reality is absolutely horrifying in terms of the life that these children are leading. It's unacceptable and inappropriate.

I want to say that although I will support this, I really do believe that it behooves us to enshrine in the legislation the obligation of a First Nations deputy because it then obliges the BOIE to fund it. That's all I'm going to say, but I will be supporting this, Mr. Chair.

**Mr. Zimmer:** The government supports this motion. We support the idea of a deputy advocate such as a deputy advocate to represent aboriginal youth. We believe the discretion to do so should rest with the advocate, and this amendment achieves that.

**The Chair:** Thank you. Did you ask for a recorded vote?

**Ms. MacLeod:** Yes.

### Ayes

Balkissoon, Horwath, MacLeod, Oraziotti, Qaadri, Rinaldi, Zimmer.

1000

**The Chair:** The motion carries.

First of all, before I move on the next motion, on sections 3, 4 and 5, is there any debate, discussion? Let's do them together then. Shall sections 3, 4 and 5 carry?

**Mr. Zimmer:** Hold it.

**The Chair:** There were no amendments put forward.

**Mr. Zimmer:** Are you moving 3, 4 and 5?

**The Chair:** Yes.

**Ms. MacLeod:** I have an amendment for 5.

**Mr. Zimmer:** I have in my binder a suggested PC motion on number 18 on section 5.1.

**The Chair:** Yes, that addresses a new section, 5.1.

**Mr. Zimmer:** All right. Thank you.

**The Chair:** What I wanted to put forward is the question as to whether sections 3, 4 and the present section 5 shall carry. Carried. Thank you.

Then we move on to page 18. This is a PC motion which addresses section 5.1. Ms. MacLeod.

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

“Non-application of CECBA

“5.1 The Crown Employees Collective Bargaining Act, 1993 does not apply to the advocate or the advocate's staff.”

This was recommended twice, once by DCI and once by a young lady named Sarah-Jane Dagg from my city of Ottawa, people who have experience in the child welfare system.

“Legislation dealing with Ontario's public service raises a concern that although the advocate will be independent, the independence of the advocate staff may be compromised. There's a perceived conflict between effective child advocacy and union membership in common with other public servants, and this conflict arises in two ways: The need for child advocacy increases significantly during a public service strike as they cause significant disruption for young people living in facilities affected by the strike, and the potential perception of the advocate as investigator or adversary to workers and service provider due to the advocate's function of responding to complaints.”

I received a little handwritten note from a friend of mine who feels very passionate about child advocacy, and I want to read into the record just the statements. I want to do this for the government and for my colleague in the third party. There are three points:

“(1) Similar positions reporting to the Legislature—Auditor General, Chief Electoral Officer and Environmental Commissioner—all employ staff through employment contracts. These contracts are comparable in compensation to similar positions in the public service;

“(2) Practical issues”—and they reference specifically Sarah-Jane Dagg's presentation to us: “The difficulty with union members reviewing the work of other union members, particularly during a strike; and

“(3) Intent is to make the advocate independent. It seems counterproductive to then have unionized staff pulling the office back into the Crown Employees Collective Bargaining Act.”

I think these points say it all, and it's important that we reach a compromise here to ensure that this office is fully independent, but more than that, what we all have to think about right now are the children. The children spoke here and told us that they did not want to be part of union versus government in political strikes. They don't want to be part of that. They want to be receiving the care they deserve, and I think that this amendment needs to be supported on a recorded vote.

**Ms. Horwath:** I certainly did listen to the comments that were raised during the hearings, and I understand that there is tension around the possibility of a strike and how that would affect the work of an advocate's office, particularly if the advocate's office staff were organized in the same bargaining unit as perhaps, let's say, striking staff at a correctional facility who are in the same

bargaining unit, which would be OPSEU. But I don't believe it's appropriate for us in this bill to strip workers of their right to bargain collectively. Not only do I not think it's appropriate, but I think it's a matter of future discussion that needs to take place with the union, perhaps through a memorandum of understanding or some other vehicle through which an understanding can be undertaken to be sure that children who are in a facility where a strike is taking place are not put at risk. I think there are many ways to do that in a mature and negotiated way as opposed to simply stripping workers of their collective bargaining rights.

I don't like the kind of heavy-handed, negative type of message that sends to workers. I don't like the connotation that any piece of legislation can be brought forward and simply strip workers of their rights to bargain collectively. I think we can gain the same kind of gains through a much more conciliatory approach as opposed to a heavy-handed, negative, punitive type of approach that strips workers of their collective bargaining rights.

**Mr. Zimmer:** The government is unable to support this motion. The amendment does have the potential effect of preventing successor rights. This government supports the concept of the transfer of successor rights.

**Ms. MacLeod:** I'd just like to respond to both comments. First, I don't think we should be putting anyone ahead of the children in this piece of legislation. Second of all, there has already been a precedent set with three other officers of the Legislature to use a different method, with pay compensation being similar to that in the public service. I just want to add that comment and just remind my colleagues that it was not lawyers who came in and told us this, and it was not the labour force; it was children. People who actually live as crown wards told us that they would feel more comfortable. If this bill is for the children and we wanted to have their input, then we should vote according to their wishes.

**Ms. Horwath:** I'm not going to be able to support this motion, notwithstanding the couching of it by the member of the official opposition. We all know that party's record on labour relations. We don't want to go back down that road in this province, in my opinion. We need to work with our people in our bargaining units. We need to work with our workers and make sure that children's rights and interests are protected, no matter what. So I'm not going to support it.

**The Chair:** Thank you. Did you ask for a recorded vote on this?

**Ms. MacLeod:** Yes.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Horwath, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion is not carried.

Before we move on to motion 19, members of committee, there are certain sections of the bill that have not had any amendments, so I'm just going to ask whether or not those sections shall carry.

We'll start with section 6. Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall section 10 carry? Carried.

Shall section 11 carry? Carried.

Shall section 12 carry? Carried.

Now we move on to section 13—

**Mr. Zimmer:** Chair, did we do 5.1?

**The Chair:** Yes, we just did it. We had a recorded vote and it did not carry.

Now we move on to page 19. It's an NDP motion with regard to section 13 of the bill.

**Ms. Horwath:** I move that section 13 of the bill be amended by adding the following clause:

"(b.1) provide advocacy to children who are attending schools, whether public or private;"

I think it speaks for itself.

**The Chair:** Any further debate? I'll put the question.

**Ms. Horwath:** Can I get a recorded vote?

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to number 20, a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

"(b.1) provide advocacy to children with special needs;"

I think the motion speaks for itself.

**The Chair:** Thank you. Any further debate?

**Ms. MacLeod:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move to page 21, a PC motion.

**1010**

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

"(b.2) provide advocacy to deaf and hard-of-hearing students;"

I think that this speaks for itself. It's something that we heard consistently throughout our consultations. I'm hoping that there's a government motion—once this one gets voted down—that deals with this.

**Mr. Zimmer:** The government is unable to support this motion. The government has its own motion, number 27, which in our view covers the point.

**The Chair:** Any further debate? None? I'll now put the question. All those in favour of PC motion 21? Opposed?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 22. This is a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

“(b.3) provide advocacy to young persons who, before the coming into force of this act, were under the jurisdiction of the chief advocate for the Office of Child and Family Service Advocacy;”

I think we heard from the chief advocate that she expected that we should continue to have under her mandate the ability to provide services and advocacy for those children she currently serves. I think that this is entirely consistent with what we heard from so many of the children and youth who appeared before us. I think the amendment speaks for itself.

**Mr. Zimmer:** The government is unable to support this amendment. We will be bringing forward specific amendments later this morning to cover this point.

**Ms. Horwath:** Can I just get clarification? You're talking about the ones in the package, right? Or are you going to table new ones?

**Mr. Zimmer:** In the package.

**Ms. Horwath:** Thank you. You never know.

**The Chair:** Did you ask for a recorded vote?

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to 23. It's a PC motion.

**Ms. MacLeod:** I keep coming back for more, Mr. Chair.

**The Chair:** Keep coming.

**Ms. Horwath:** Thank God you've got stamina.

**Ms. MacLeod:** I know—and a positive attitude.

I move that section 13 of the bill be amended by adding the following clause:

“(b.4) provide advocacy to children and youth who, due to the complexity of their special needs, require services from different ministries and service sectors;”

This was recommended by the Psychiatric Patient Advocate Office, which felt that the four functions of the advocate listed in section 13 of the bill were too narrow and should be expanded to include providing advocacy and rights protection services to all children and youth in Ontario seeking or receiving government services. Again, I think this resolution speaks for itself.

**Ms. Horwath:** Two things: First, I'm supporting all of these because they reflect the first motion that I put on the table at the beginning of this clause-by-clause process. The all-encompassing principles and details around the act were hoping to be covering all of these issues. So I am supporting them all because I think that they're important and need to be reflected in the legislation.

But I do have a question, and that is, why do we jump from this motion, which is (b.4) of the bill, and on the next page, page 24, we go to (b.7), and then (b.8), (b.9), (b.10)? I don't know why. I guess the numbering is not that important. I guess it's the actual content, not the numbering.

**Ms. Filion:** I can't really speak to that, but we can fix those. Those are editorial matters that can be dealt with. They will be put in the proper order should the motions be adopted.

**Ms. Horwath:** Okay. So I just want to put on the record again that I'm supporting my colleague on her motion.

**Mr. Zimmer:** Providing advocacy services to children with special needs is already clearly and adequately included in the bill. Specifically, children who are seeking or receiving services under the Child and Family Services Act fall within the advocate's mandate.

**The Chair:** Did you call for a recorded vote, Ms. MacLeod?

**Ms. MacLeod:** Yes.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziotti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to a PC motion on page 24.

**Ms. MacLeod:** I move that section 13 of the bill be amended by adding the following clause:

“(b.7) provide advocacy to young persons in Ontario receiving services from nongovernmental agencies, including, without being limited to, private schools, camps,

hospitals, and those providing services to unaccompanied minors.”

This is a recommendation that resulted from the Ontario Association of Children’s Aid Societies’ presentation. I thought that their presentation was excellent. They suggested the functions of the advocate as listed in the legislation are too narrow. We didn’t hear that just from the children’s aid societies of Ontario; we heard that from several people. So I think that it should be expanded to include advocacy and rights protection services to children receiving services from private and non-governmental organizations or agencies. I would ask for a recorded vote.

**Mr. Zimmer:** The government is unable to support this. The proposed amendment goes far beyond the advocate’s current mandate. The intent of Bill 165 is to make the advocate independent, not to expand the mandate.

**The Chair:** A recorded vote’s been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** That does not carry.

We move on to page 25, a PC motion.

**Ms. MacLeod:** I move that section 13 of the bill be amended by striking out “and” at the end of clause (b) and by adding the following clauses:

“(b.8) provide advocacy to children who are pupils of provincial schools for the deaf, schools for the blind, and demonstration schools under section 13 of the Education Act;

“(b.9) provide advocacy to children and youth who are held in custody under the responsibility of a police force or a municipality under section 16.1 or 137 of the Police Services Act;

“(b.10) provide advocacy services to young persons who are subject to probation or supervision in the community under the Youth Criminal Justice Act (Canada); and”

This was recommended by the Defence for Children International. Three groups that are currently served by the Office of Child and Family Service Advocacy are excluded from the current legislation, including students in provincial schools for the deaf, schools for the blind and demonstration schools; young people in police or court holding cells and young people transported to, in or from police or court holding cells; and young people receiving non-custody services under the Youth Criminal Justice Act. So I think this really needs to be included, and I encourage my colleagues to support it. I am calling for a recorded vote.

**Ms. Horwath:** Members of the committee just need to slide their eyes to the next page to see why I wholeheartedly support this motion.

**Mr. Zimmer:** The government is unable to support this for three reasons. One, government motion 27 specifies that advocacy services will be provided to students attending provincial schools for the deaf, schools for the blind, and those attending demonstration schools for students with learning disabilities. This reflects the advocate’s current scope of services. The second point: Young persons who are subject to probation or supervision in the community under the YCJA are already covered by this legislation. The third point: Our understanding from the current advocate is that expanding the advocate’s power to include children and youth under the Police Services Act would require far more consultation before being given consideration.

**The Chair:** A recorded vote’s been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

As Ms. Horwath has pointed out, on page 26, the NDP motion is a duplicate of the previous motion, so I’m going to rule it out of order.

We’ll move on to government motion 27, Mr. Zimmer.

#### 1020

**Mr. Zimmer:** I move that section 13 of the bill be amended by striking out “and” at the end of clause (c) and by adding the following clauses:

“(c.1) provide advocacy in accordance with clause 14(1)(j.1) to children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act;

“(c.2) provide advocacy in accordance with clause 14(1)(j.2 ) to children and youth with respect to matters that arise while held in court holding cells and being transported to and from court holding cells; and”

The rationale, in plain language here, is that the following functions are added within the text of the bill: First, the advocate will provide advocacy services to children who attend the provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act. These services will be provided in accordance with clause 14(1)(j.1). The advocate will provide advocacy services to children and youth held in court holding cells or being transported to and from court holding cells. All of these are going to be provided in accordance with clause 14(1)(j.2).

**Ms. Horwath:** I am going to possibly support this but I’ve got a real problem with a part of it. When you look at clause (c.1), which refers to clause 14(1)(j.1), and then

you move to government motion 34 and you look at what that says in (j.1)—and I'm going to read it into the record, because this is problematic from my perspective—it says that the institutions described in motion 27 “receive and respond to complaints from children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act and use informal methods to resolve those complaints.”

In other words, the government is two-tiering the services for children in schools for the deaf, schools for the blind and demonstration schools. What they're saying is they're not getting the full force of the advocate's representation. They're prescribing that the advocate use informal methods to resolve the complaints. I don't think that's strong enough.

We heard at committee from Gary Malkowski, a former member here in this Legislature, graphic descriptions, from him and other representatives, particularly from the deaf, hard-of-hearing and culturally deaf community, saying that deaf children particularly were very often—extremely often—victims of sexual abuse. So for the government to then think it's all right to have informal processes for their opportunities for accessing the services of the advocate, and for the advocate's involvement in their cases to be informal, prescribed in the legislation—I'm just not happy with that. In fact, I think I've just convinced myself that I'm going to have to vote against that motion. I just don't think it's appropriate.

Now, maybe there's some piece that I don't understand or some reason why it's in there, but it seems to me we heard very loudly and very clearly from the deaf community, from Gary Malkowski and others who were asking us—begging us, really—to make sure that their interests were covered off in the bill. In fact, I have an open letter right here from Mr. Malkowski. It was sent to a number of members of this Legislature, including—well, you can read it yourself, because it's in all of our packages.

Again, I really urge the government to not go down this road and not restrict or reduce or constrict the kinds of advocacy the advocate can undertake with respect to these very vulnerable children. It's just not acceptable.

On clause (c.2), in terms of the other piece of the motion the government is putting forward, I'm okay with that. I don't see anything glaring in terms of being problematic with that. But I do really have a problem with the first section, so I'm not going to be able to support it. I'm going to ask for a recorded vote too, please.

*Interjection.*

**Mr. Zimmer:** Just by way of reply—is it important?

**Ms. MacLeod:** I want to hear the government's response before I make my comment.

**The Chair:** Okay, sure.

**Ms. MacLeod:** I am going to support this resolution because I think it's important that it gets in there. I don't necessarily interpret this resolution the same as my

colleague, but I want to hear from the government their rationale before I make a firm decision.

**Mr. Zimmer:** During the public hearings, deputants said that the act should clearly reflect the range of services that the advocate currently provides, including services to children attending provincial and demonstration schools, and children and youth held in court holding cells or being transported to and from court holding cells.

These services are currently provided by the MOU and operational protocol respectively and would have required regulations to be prepared under the original drafting of Bill 165. These amendments codify the provision of these services, making the advocate's mandate clear and assuring that these groups are clearly recognized as having a right to the services of the advocate.

**The Chair:** Further debate? A recorded vote has been asked for.

### Ayes

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

### Nays

Horwath.

**The Chair:** So the motion carries.

**Mr. Zimmer:** Mr. Chair, it's 10:30. Could we have a two- or three-minute break?

**The Chair:** A two- or three-minute break?

**Mr. Zimmer:** You know the kind of break I'm referring to.

**The Chair:** A coffee break.

**Mr. Zimmer:** Just two or three minutes.

**The Chair:** All right. My watch says 10:27. We'll come back at 10:35 sharp. Is that okay?

**Mr. Zimmer:** At 10-3-0?

**Ms. Horwath:** That's 10:30 sharp.

**The Chair:** Yes.

*Interjections.*

**The Chair:** All right, if you can do it in three minutes, that's great. We're recessed for a few minutes.

*The committee recessed from 1027 to 1034.*

**The Chair:** We're right on time. We are now back in session. This is the committee on justice policy. We are on an NDP motion on page 28.

**Ms. Horwath:** I move that section 13 of the bill be amended by adding the following subsection:

“Interministerial provincial advisory committee:

“(2) The advocate shall continue the committee known as the interministerial provincial advisory committee, or establish a substantially similar committee.”

This was a direct request from the advocate to make sure that that committee was not dissolved.

**Ms. MacLeod:** The official opposition supports this motion. I just want that on the record.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion is not carried.

That ends the amendments on section 13. Shall section 13, as amended, carry?

**Ms. Horwath:** Recorded vote.

**Ayes**

Balkissoon, MacLeod, Orazietti, Qaadri, Zimmer.

**Nays**

Horwath.

**The Chair:** The section carries.

We'll move on to page 29, a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

“(a.1) investigate the withdrawal of complaints by children or youth who have been approached by the advocate;”

This was recommended by the Psychiatric Patient Advocate Office for very good reasons. For kids who are complaining about caregivers, that can cause undue stress and anxiety, especially for vulnerable kids who are in custody of adults who often make decisions about when they will leave a program or service. The power and balances may serve to silence some children and youth who otherwise would have the very legitimate and real complaints that require investigation by the advocate.

**Mr. Zimmer:** The government appreciates the intent of the proposed amendment, but the current provisions of Bill 165 are that the advocate can make efforts to pursue private discussions with children or youth who withdraw their complaints. We have to maintain the advocate's ability to partner with children and youth and use his or her discretion in these matters.

**Ms. MacLeod:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to page 30, a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

“(a.2) receive and respond to complaints and inquiries from persons 18 years of age or older about incidents that occurred when the person was a minor;”

The current legislation does not make it clear if the advocate will have the mechanism to investigate these complaints on behalf of these children to whom incidents happened when they were minors.

I'd appreciate a recorded vote.

**Mr. Zimmer:** There's a government motion later on which covers this territory.

**The Chair:** Any further debate? A recorded vote has been asked for.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

Page 31, an NDP motion.

**Ms. Horwath:** I move that clause 14(1)(f) of the bill be amended by striking out “and” after subclause (ii) and by adding the following subclauses:

“(ii.1) provided to children under section 13 of the Education Act,

“(ii.2) provided to children or youth under section 16.1 or 137 of the Police Services Act,

“(ii.3) provided to young persons under the Youth Criminal Justice Act (Canada), and”

It's pretty clear. We've been through this a couple of times. I'm just reiterating my support for this initiative.

**Ms. MacLeod:** I have a very similar motion after this one that's going to be ruled out of order; that's why I support it wholeheartedly.

**Mr. Zimmer:** The government can't support this. It's covered in government motion number 27.

**Ms. Horwath:** Recorded vote.

1040

**Ayes**

Horwath, MacLeod

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer

**The Chair:** The motion does not carry.

Members of committee, on page 32, the PC motion is a duplicate of the NDP motion that we just voted on, so I'm going to rule it out of order as being a duplicate.

We'll move on then to number 33—

**Ms. MacLeod:** This might be some housekeeping, but I'd like to withdraw Conservative motion 37. It is exactly the same as the New Democrat motion for clause 14 (1)

(h.1) that we're about to read. I will be supporting her motion.

**The Chair:** I think we require a motion to withdraw, but I don't think there's going to be opposition.

*Interjection.*

**The Chair:** You can just withdraw? Okay, thank you.

We move on to page 33, NDP motion, Ms. Horwath.

**Ms. Horwath:** I move that subsection 14 (1) of the bill be amended by adding the following clause:

“(h. 1) conduct critical incident and child death reviews;”

Again, very briefly, this was something that was raised during hearings by the advocate. Although there's an acknowledgement that there needs to be some work done on how that happens and exactly what role the advocate will take and how that will be undertaken, that was something that I thought would be important to enshrine in legislation so that we're all aware that that's something that we would expect the advocate to undertake.

**The Chair:** And you'll be requesting a recorded vote? Okay.

**Ms. MacLeod:** Just quickly, I would like to add the official opposition's support for this amendment simply because we had a similar amendment later on in the package that we've withdrawn. At present, there's no independent body in Ontario that conducts critical incident or child death reviews. A number of child advocates across the country do have this ability, so I support it.

**Mr. Zimmer:** The government does not support this amendment. Child death reviews are the responsibility of the Office of the Chief Coroner, which is an independent body. Our government has worked and is working directly with the Office of the Chief Coroner to develop a more comprehensive approach to child death reviews and reporting, which has already been implemented.

### Ayes

Horwath, MacLeod

### Nays

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer

**The Chair:** The motion does not carry.

Moving on to page 34, this is a government motion. Mr. Zimmer, do you want to read the motion?

**Mr. Zimmer:** I move that subsection 14 (1) of the Bill be amended by adding the following clauses:

“(j.1) receive and respond to complaints from children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the Education Act and use informal methods to resolve those complaints;

“(j.2) receive and respond to complaints from children and youth with respect to matters that arise while held in court holding cells and transported to and from court holding cells;”

These are companion amendments to section 13. These clauses clarify that the advocate will provide direct delivery of advocacy services to students attending provincial or demonstration schools and children and youth held in court holding cells or being transported to and from court holding cells. “Informal methods” simply refers to the fact that, as is currently the case, the advocate can compel agreement between the parties but can use moral suasion. The language exists currently in section 14 of the act.

**Ms. Horwath:** I'm not going to support this motion. I don't think it's appropriate to say to the deaf community that their children are not equal to everybody else's children in terms of accessing the services of the child advocate. I think it's wrong. I don't understand why the government thinks it's okay to allow for legislation to go forward that treats children—because of their disability—differently from other children. It's inappropriate, Mr. Chair. We heard from the deaf community very clearly that they want and they need—and that their children are particularly vulnerable, and that's why they want and they need—the services of the independent child advocate. The problem is—this is why we need a committee, I have to submit, a standing or select committee on these issues—it's not good enough to say that because it's the Education Act or because it's this act or because these kids are here or these kids are there we have to have a hands-off approach when it comes to being covered by the office of the independent child advocate. It is unacceptable. Children are children. Deaf children, as we heard, are vulnerable particularly to sexual predators, particularly to sexual assault. It's just unacceptable.

I know that in the process of the hearings what came up as well was the frustration, particularly by one of the parents who presented, indicating an extreme level of frustration around lack of services for ASL for children in schools, that their children are going largely uneducated in this province because there are not appropriate services and there are not appropriate education assistants to help with their education.

The bottom line is, regardless of that scenario, that's exactly why we need to have them fully covered with the services of the child advocate office. These are the systemic issues that the child advocate office needs to bring to the light of day so that perhaps the impetus will be there to provide the appropriate services to these children.

So I cannot support this and I will not support it. I wish the government would reconsider, because I think it sends a very, very odious message to children with disabilities and their parents.

**The Chair:** Further debate? None?

So with regard to government motion on page 34—

**Ms. Horwath:** Recorded vote, please.

### Ayes

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**Nays**

Horwath.

**The Chair:** The motion carries.

We'll move on to page 35. It's an NDP motion.

**Ms. Horwath:** I move that subsection 14(1) of the bill be amended by striking out "and" at the end of clause (o) and by adding the following clause:

"(o.1) assist children and youth with complex special needs and their families to access appropriate services from ministries, agencies and service providers and conduct committees and case conferences for the benefit of children and youth with complex special needs and their families; and"

Again, this came up in hearings; I'm not going to belabour the point. It's about children with special needs and making sure they're included, since they were actually the impetus for the child advocate office to exist in the first place.

**Ms. MacLeod:** I have a very similar motion later on, so I will be supporting this motion; hopefully it will pass and mine won't be needed.

**The Chair:** Mr. Zimmer, do you have any comments?

**Mr. Zimmer:** No.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll go on to page 36. This is a PC motion.

**Ms. MacLeod:** This is exactly the same—

**The Chair:** This is a duplicate of the previous motion.

**Ms. MacLeod:** Yes, just a different order, but the same wording.

**The Chair:** So I'm going to rule it out of order. Don't take it personally.

**Ms. MacLeod:** Too late.

**The Chair:** I think you did the same with 37; you withdrew that one.

**Ms. MacLeod:** I did.

**The Chair:** We'll move on to number 38. This is a PC motion.

**Ms. MacLeod:** I move that subsection 14(1) of the bill be amended by adding the following clause:

"(r) investigate third party complaints where appropriate;"

This was recommended by the Psychiatric Patient Advocate Office. The current legislation at this point in time does not make it clear if the advocate will have a mechanism to receive third party complaints, which may be appropriate in some circumstances. So I urge my colleagues to consider that.

**The Chair:** Any further debate?

**Ms. MacLeod:** A recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to number 39, which is a PC motion.

**Ms. MacLeod:** Well, Mr. Chair, I'm just like a Timex watch: I keep taking a licking but I keep on ticking.

I move that subsection 14 of the bill be amended by adding the following subsection:

"Proactive

"(1.1) Nothing in this act requires the advocate to wait for a complaint where the advocate is of the opinion that action needs to be taken."

This was recommended by Michael Cochrane of Ricketts, Harris LLP. As I indicated earlier, he gave a brilliant presentation to this committee, and he suggested that the advocate should be specifically authorized to be proactive in its inquiries and the office should not be complaint-driven. I think that having an independent advocate who is proactive would really be beneficial to the children and youth in this province.

**1050**

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 40, a PC motion.

**Ms. MacLeod:** I move that subsection 14(3) of the bill be struck out and the following substituted:

"Summons, etc.

"(3) The advocate may issue summons, enforce the attendance of witnesses, compel testimony under oath and compel witnesses to produce records."

This was recommended by the Psychiatric Patient Advocate Office. Without the ability to investigate complaints or systemic issues, the effectiveness of the advocate is diminished. The advocate must have more than just moral authority or powers of persuasion. The advocate must have legal authority to monitor and enforce compliance.

**The Chair:** Further debate?

**Ms. MacLeod:** Recorded vote, please.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 41, a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Documents

“(3.1) Despite subsection (3), the advocate has the right to access documents required for an investigation.”

This was recommended by the Canadian Foundation for Children, Youth and the Law and the Office of Child and Family Service Advocacy, whom I believe are two experts in the field of independent child advocacy and children’s advocacy in general, and I believe that we need to support this resolution.

**Mr. Zimmer:** We’re unable to support this. The information and privacy provisions in this piece of legislation were developed carefully and thoroughly in consultation with the Information and Privacy Commissioner.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

**Ms. Horwath:** I just wanted to include a comment in this regard. I understand that there is real concern about the way that the government has dealt with the freedom of information issues in the bill, and it’s problematic. That’s what we heard loud and clear. I know my colleague and myself, a little later on, are just trying to figure out how to fix it. There are a couple of resolutions in that regard, because I think what has been done is overkill. That’s certainly what we’ve been hearing.

**The Chair:** Any further debate on the PC motion? Seeing none, I’ll put the question.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We’ll move on to page 42. This is an NDP motion.

**Ms. Horwath:** I move that subsection 14(4) of the bill be struck out and the following substituted:

“Right to enter

“(4) The advocate has the right to enter any place where a child or youth is receiving services described in section 13.

“Notice

“(4.1) Upon entering a place to communicate with a child or youth or to undertake a review, the advocate

shall notify the person in charge of that place or the person who has custody or control of the child or youth.”

Very briefly, although there’s a PC motion that’s similar coming up next, which probably will still be in order because it is different, I included in mine that the access needs to take place not only when it’s a response to a particular youth complaint but when there’s an issue of review that the advocate needs to undertake, and that the advocate needs to be able to access a place without providing prior notice and without providing a prior heads-up. Just simply being able to access is absolutely required if the advocate is going to be able to do her or his job.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 43 we have a PC motion.

**Ms. MacLeod:** I move that subsection 14(4) of the bill be struck out and the following substituted:

“No infringement on access

“(4) The advocate may enter any place where a child or young person is receiving services under section 13 without delay or restrictions and without the requirement to provide advance notice.”

This was recommended by the Canadian Foundation for Children, Youth and the Law, as well as the chief advocate for the Office of Child and Family Service Advocacy, whom I believe we should take some guidance from on this particular matter. I’ll be asking for a recorded vote.

**The Chair:** Thank you. Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 44, which is a PC motion.

**Ms. MacLeod:** I’m beginning to take personal—

**The Chair:** No, don’t take it personally.

**Ms. MacLeod:** I’m teasing.

I move that subsection 14(4) of the bill be struck out and the following substituted:

“Right to enter

“(4) The advocate has the right to enter any place where a child or youth is receiving services described in section 13.

“Notice

“(4.1) Upon entering a place to communicate with a child or youth, the advocate shall notify the person in charge of that place or the person who has custody or control of the child or youth.”

This was recommended by the Defence for Children International—Canada, who I believe form the basis of much of our knowledge on this piece of legislation. I encourage my colleagues to support it. We’ll be asking for a recorded vote.

**The Chair:** Thank you. Any further debate? None.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziatti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

We move on to page 45. This is a government motion.

**Mr. Zimmer:** I move that subsection 14(4) of the bill be struck out.

The rationale here is that during public hearings the deputants requested that the advocate have unfettered access to children and youth, which equates to power of entry. We recognize that providing advance notice to a service provider of the advocate’s intention to enter could have the unintended consequence of preventing the advocate from having a true impression of the children’s normal environment. To address the concern about access of the advocate, we propose to strike subsection 14(4) out.

**Ms. Horwath:** I’m a little nervous, and I just need some reassurance that the government feels that by striking out this section it still covers off the opportunity for the advocate to actually enter premises. Now it’s silent on that, so I’m a little bit worried about whether or not it’s covered off. I’m not being facetious; I want to know that it is covered off in another part of the bill which proactively allows the advocate to actually enter premises.

I agree with the government striking it out, and I’m pleased that they’re doing that, so I don’t want to give the wrong impression. The minister told me the other day in the House that she was doing that, and I support that idea. But being silent on everything else, I’m really worried.

**Mr. Zimmer:** Ministry counsel will speak to that narrow point.

**The Chair:** Good morning. Could you please identify yourself.

**Ms. Cindy Crandall:** My name is Cindy Crandall, and I’m counsel for the Ministry of Children and Youth Services.

I wanted to address your issue and just point to government motion number 58, which amends subsections

16(2) and (3) of the bill. If you look at that, what’s being proposed goes hand in hand with motion 45.

**Ms. Horwath:** All right. But this is only—I’m sorry. I think it’s an important point, with respect. It’s specific to access to a child or youth, and it’s specific to access to a child in care in subsection 16(3), but what it doesn’t speak about is the right of an advocate to enter a premises on a review. It’s only specific to a child, as opposed to if the advocate needs to do a review or is doing an investigation—although we don’t call it an investigation, it’s an investigation by any other name. Is that covered in other government amendments?

1100

**Ms. Crandall:** The intention was that the advocate have the right to the child. The advocate does not have the right of entry into a premise for the purpose of conducting a review. It is the right for access to a child to receive and respond to complaints from the child.

**Ms. MacLeod:** I’m not sure that addresses my concern. My concern is the right of entry to get access to that child. For example, if a child in the care of the welfare system—there could be delay based on the fact that—

*Interjection.*

**Ms. MacLeod:** Yes, there could.

*Interjection.*

**Ms. MacLeod:** How can you assure me of that? I think that there needs to be a positive reinforcement of the right to entry and access stated explicitly in this piece of legislation. I could see right now that if the advocate decided, based on this legislation—unless you can reassure me otherwise. If the chief advocate or the independent advocate walked into a facility to try and access a child, they could receive, despite the fact that they have a right prescribed later on—they could be faced with delay by anybody who’s staffing or supervising that facility.

**Ms. Crandall:** If you refer to the proposed amendment in 58, which would add subsection 16(3), it says, “Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advocate”—and it goes on from there.

**Ms. MacLeod:** And what is unreasonable? I don’t think this is strong enough and I’ll be voting against it.

**Mr. Zimmer:** Thank you very much for the answer to that question.

**Ms. Horwath:** I guess we’ll debate it more when we get to government motion 58. I’m going to support the striking out of this section because I agree that unfettered access is necessary, and what this section does is cause that to not be able to happen. There needs to be prior notice. So I am going to support it, with the caveat that when we get to 58, I would ask the government and the minister’s staff to really look at that motion 58 before we get there because it’s got problems. I’m really concerned about not allowing the advocate access for the purposes of a review and having that articulated in the bill, as well as some of the language around “unreasonable delay” and “reasonable private access.” Those are mealy-mouthed little words that can cause big problems. So I’m

just asking in advance that the government look at their motion 58 and see if they can amend it before we get there. Having said that, I do support the striking out. That's where we are, right? The striking out of 14(4)?

**The Chair:** Yes.

**Ms. Horwath:** Thank you, Mr. Chair. I apologize for the delay.

**The Chair:** All those in favour of the motion?

**Ms. MacLeod:** Recorded vote, please.

#### Ayes

Balkissoon, Horwath, Orazietti, Qaadri, Rinaldi, Zimmer.

#### Nays

MacLeod.

**The Chair:** The motion carries.

We move on to page 46. It's a PC motion.

**Ms. MacLeod:** I'd like to amend it. I'd like to say "subsection 14(4) of the bill."

I move that section 14 of the bill be amended by adding the following subsection:

"Entry without notice

"(4) In case of emergency, the advocate may enter premises and facilities without notice."

I think it's a much more positive reinforcement of the access that the advocate needs. I think there should be no restrictions on entrance, and I think we should be making a positive statement that she can enter without notice.

**The Chair:** So the only change you made was 14—

**Ms. MacLeod:** Without subsection (4), which was just struck out, I think we need to add something that's positive: entrance without notice.

**The Chair:** Yes, I understand. Any further debate on this?

**Mr. Zimmer:** Government motion 58 deals with this point.

**Ms. MacLeod:** I ask for a recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** The motion does not carry.

On page 47 there's an NDP motion.

**Ms. Horwath:** I move that section 14 of the bill be amended by adding the following subsection:

"Evidence

"(4.2) Despite subsection (3), the advocate may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that

is relevant to the work of the advocate to furnish to him or her any such information, and to produce any documents or things which in the advocate's opinion relate to any such matter and which may be in the possession or under the control of that person, and for that purpose may summon witnesses and administer oaths."

Very briefly, this is to try to cover off the access to information for the advocate without using legal language that would consider it to be an investigation, because we heard very clearly that powers of investigation are not something that would be appropriately ascribed to an advocate whose role it is to advocate for one side, the child's, which is totally appropriate. "Investigation" connotes a non-biased approach, and that's not what we're looking at here. We're looking at advocacy for the children from their perspective. What this tries to do is say that in that role of advocate, particularly in reviews and in the gathering of information, it's clearly stated that the advocate has access and can ask for information from various sources.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 48. This is an NDP motion.

**Ms. Horwath:** I move that section 14 of the bill be amended by adding the following subsection:

"Where no action taken

"(4.3) Where the advocate is of the opinion, after taking a reasonable amount of time, that appropriate action has not been taken with respect to a matter where the advocate provided advocacy, the advocate may bring the matter to the attention of any or all of the Premier, the Legislative Assembly or the general public, as the advocate sees fit."

This is just to reiterate the advocate's ability to bring attention to the issues that she or he is dealing with.

**The Chair:** Any further debate on this? No debate?

**Ms. Horwath:** Recorded vote, please.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 49. It's a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Reconsideration

“(6.1) The advocate may reconsider a decision not to take action, if requested by the person who made the initial complaint.”

This was put forward by the Psychiatric Patient Advocate Office. The bill requires that the advocate give the complainant notice in writing of the advocate’s decision not to act on a complaint. The section should be amended to provide an appeal mechanism whereby the advocate has the power of reconsideration. Such a procedure would better protect the rights of children and youth.

**The Chair:** Any further debate?

**Ms. MacLeod:** A recorded vote, please.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 50. It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Direct contact

“(8) The advocate has the right to have direct contact with children and youth to whom this act applies.”

With respect to the defeat of my motion on subsection (4) dealing with positive entry, I think we need to have some positive reinforcement, which I do not think motion 58 addresses. I support this and I will be asking for a recorded vote.

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

Page 51: It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Advisory committee

“(9) The advocate may establish an advisory committee.”

This justice committee has actually struck down, I think, three amendments previous to this. I think It’s necessary, in the absence of them wanting to put in an IPAC and a select committee, that at the very least we allow the advocate to have the power to appoint an

advisory committee. I think we heard that several times throughout the deputations.

I’ll be asking for a recorded vote.

**1110**

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We move on to page 52. It’s a PC motion.

**Ms. MacLeod:** I move that section 14 of the bill be amended by adding the following subsection:

“Subcommittees, etc.

“(10) The advocate may establish subcommittees or expert panels to address specific rights and entitlements facing children and youth.”

If the independent advocate wants to do this, I think that we should provide her with the ability to do so.

We’ll be asking for a recorded vote.

**The Chair:** Any further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Orazietti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

That completes the amendments to section 14, so I’ll now put the question. Shall section 14, as amended, carry?

**Ms. MacLeod:** Recorded vote.

**Ayes**

Balkissoon, Orazietti, Qaadri, Zimmer.

**Nays**

MacLeod.

**The Chair:** The section carries.

We move on to the next motion, which is on page 53. It’s a PC motion.

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

“Children’s bill of rights

“14.1 The advocate shall establish and publish a children’s bill of rights for Ontario, and oversee its implementation.”

I think there could be no finer person to be put in charge of developing this bill of rights and reporting back to a legislative committee than the chief advocate. I would beg the government members to support me on this.

I ask for a recorded vote.

**Mr. Zimmer:** It's the role of the new independent advocate to determine his or her activities and priorities. I'm happy to leave that matter to the role of the advocate.

**Ms. Horwath:** I'll be supporting this motion. I think it's important that we have a children's bill of rights as well. When it came up in the hearings, I think it had overall support from people at committee as well as people sitting around in the galleries watching the proceedings. I actually agree and will be supporting it.

**The Chair:** I'll now put the question.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Oraziatti, Qaadri, Zimmer.

**The Chair:** The motion does not carry.

We'll move on to the next motion, number 54. It's a government motion.

**Mr. Zimmer:** I move that subsection 15(2) of the bill be struck out.

The advocacy process should be free of political interference and free of the perception of political interference. This is the purpose of making the advocate an independent officer of the Legislature.

**Ms. MacLeod:** I fully support this and, in fact, have a notice of motion right after this resolution. I guess it will be ruled out of order. Because I support it so much, I put it in myself.

**Ms. Horwath:** I'm going to support the motion as well. After the issue came up in hearings, I did some research on it and determined that it's the same clause that already exists in the Ombudsman Act. The idea is that an advocate or an independent officer of the Legislature would not be doing any systemic reviews, obviously, without engaging the organization that's being reviewed. But it seems to me that if it's an act of goodwill by the government to strike this out, assuming, and I think with full knowledge, that the regular process of any independent advocate is to actually do that, is to go back and forth—we know that the Ombudsman, for example—and even the Auditor General—does that: goes back and forth to the ministries involved and clarifies issues and facts. I think any advocate worth their salt would be doing the same thing.

Keeping it under legislation as a gesture of goodwill from the government, I'm prepared to accept that, but it's with the full knowledge of everyone around this table that that's just the way of doing business for independent officers in terms of the efficacy of their job.

**The Chair:** I'll now put the question regarding the motion. Shall the government motion on page 54 carry? It's carried.

**Mr. Zimmer:** Unanimous.

**The Chair:** On page 55, it's really just a notice. It's not really a motion, so I'm going to rule it out of order.

**Ms. MacLeod:** I figured you'd do that.

**The Chair:** Yes. Shall section 15, as amended, carry? Carried.

We'll move on to page 56. It's an NDP motion.

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

“Rights of children and youth

“15.1 Every child and youth described in section 13 has the right,

“(a) to be informed of the existence of the advocate;

“(b) to contact the advocate promptly and without delay;

“(c) to be provided with the means to contact the advocate promptly and without delay; and

“(d) to speak in private with and receive visits from the advocate and members of the advocate's staff.”

Notwithstanding the government's next comment, which is going to be, “We've covered this in another amendment,” if you look at their amendment on page 58, which we've already discussed a little bit today, this amendment is much more clear, it's much more specific and it sets out that every child has the right to be informed of the advocate. The government's motion doesn't do that.

To contact the advocate promptly and without delay—they do have that. To provide the means to contact the advocate—they don't have that. And to speak in private with and receive visits from the advocate—the government says “without unreasonable delay ... or reasonable private access.” I don't think there's any reason why the advocate would not be able to have access to a child, so I don't accept that language in the government's motion. I urge the committee to consider passing my motion 56 because it does very clearly set out the rights of the child. If we are here to talk about children's rights and the advocate's assurances of children's rights, then we should be very clear with that language.

I urge members of the committee to support my motion.

**Mr. Zimmer:** The NDP critic anticipated my remarks. In the government's view, other motions—government motions—cover the point raised by the NDP critic.

**Ms. MacLeod:** It is the official opposition's point of view that no, this has not been addressed. That's why we have put a similar motion forward and that is why we will be supporting the NDP.

**The Chair:** Did the NDP ask for a recorded vote?

**Ms. Horwath:** Yes, a recorded vote.

Can I just say that one of the things that came up at the hearings—the one fellow who happened to be representing children often, and I can't remember his name off the top of my head; one of the lawyers—both children and lawyers for children said that it's not good enough to

say that the advocate has access to the child or that the child has the ability to contact the advocate, because the reality is that the control is in the service provider's hands. It's in, for example, the foster home or the group home—it's in their hands. If an incident occurs and we don't set out clearly what the rights of the child are in that regard, then the service provider could say, "Yes, you can call the advocate, but the phone won't be available until 3 o' clock on Friday afternoon"—and it's Monday.

I really do believe that putting this assurance in there for the child is of utmost importance. I'm sorry to delay, but it does need to be put on the record.

**The Chair:** I'll now put the question.

### Ayes

Horwath, MacLeod.

### Nays

Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** It does not carry.

On page 57 there's a PC motion.

**Ms. MacLeod:** It's the same motion.

**Ms. Horwath:** No, it's not really.

**Ms. MacLeod:** It isn't? Okay. I move that the bill be amended by adding the following subsection:

"Rights of children and youth

"15.1 Every child and youth described in section 13 has the right, promptly and without delay;

"(a) to be informed of the existence of the advocate;

"(b) to contact the advocate;

"(c) to be provided with the means to contact the advocate; and

"(d) to speak in private with and receive visits from the advocate and members of the advocate's staff."

I think in the absence of a positive right to entry by the advocate, this needs to be adopted. I do not think that amendment 58 by the government fully addresses the positive right to entry by the advocate, and therefore I ask members to support my resolution. I'd like a recorded vote.

**The Chair:** Further debate? I'll put the question.

### Ayes

Horwath, MacLeod.

### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

**Mr. Zimmer:** To my colleagues opposite, could we have about a two- or three-minute adjournment? A matter has come up with the advocate, and I think if we just talked about it for a minute, it will save a considerable

amount of time with respect to the discussion which will ensue on government motion 58. I think it's a wise use of the committee's time for a couple of minutes.

**The Chair:** Is that agreed? Unanimous consent? Okay. Five minutes or less? Thank you.

*The committee recessed from 1122 to 1125.*

**The Chair:** We'll call the meeting back to order. Mr. Zimmer has requested that Liberal motion 58—

*Interjection.*

**Ms. MacLeod:** Just to get it right.

*Interjection.*

**The Chair:** So the opposition and third party support holding down motion 58. What about the other ones that have to do with—

**Ms. Horwath:** Can I suggest, Mr. Chair, both motion 59 and motion 60 deal with subsection 16(3) of the bill, so we might as well wait to see what the government comes back with on 58. So we'll stand down 59 and 60, if that's consented to by the—

**Ms. MacLeod:** That's acceptable to me.

**Ms. Horwath:** Okay, that's great.

**The Chair:** What about 61? Will we do 61, then?

**Ms. MacLeod:** Let's just actually put 16 on hold.

**The Chair:** Okay. We'll leave those four motions for now.

**Ms. MacLeod:** And then let's start at 62.

**The Chair:** So we have an agreement to hold section 16 down for now. Okay. We'll move on then to section 17, and that starts on page 62. The first motion is an NDP motion.

**Ms. Horwath:** I move that section 17 of the bill be struck out and the following substituted:

"Confidentiality of personal information

"17. (1) The advocate and the advocate's staff shall not disclose personal information obtained in the course of acting under this act, except as permitted under subsection (2).

"Exceptions to confidentiality

(2) The advocate and the advocate's staff may disclose personal information obtained in the course of acting under this act,

"(a) to a children's aid society for the purpose of a report under section 72 of the Child and Family Services Act;

"(b) to the person responsible for a child or youth's care or other appropriate authority for the purpose of reporting a specific and serious risk of harm to any person;

"(c) where the person to whom the information relates has identified that information in particular and consented to its disclosure; or

"(d) where the information does not identify any person to whom the information relates and forms part of a report under section 19.

"Obligation to explain exception

"(3) The advocate or member of the advocate's staff who provides advocacy to a child or youth shall explain to him or her, in language suitable to the child or youth's level of understanding, the exceptions to confidentiality in subsection (2)."

Very briefly, this is a way to try to deal with some of the concerns that were raised around the complications that are in the government's confidentiality and privacy section of the bill.

**The Chair:** Any further debate? None? Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** So that motion does not carry.

I think the PC motion is the same, so we'll just vote on section 17. Shall section 17 carry? All those in favour? Opposed? Carried.

We'll move on to section 18, which begins with motion number 64. It's an NDP motion.

**Ms. Horwath:** I move that section 18 of the bill be struck out and the following substituted:

"Information

"18. The advocate may collect, use and disclose personal information, but shall take reasonable steps to protect the privacy of individuals while always acting in the best interests of children."

The government has decided to put extensive and lengthy language in the bill, the bill that's supposed to be about children, and children and youth are not going to easily wade through this section on protection of privacy and access to information. The idea of putting something in plain and simple language that's easily understood by children is, in my opinion, enough. It covers off the obligation of the advocate in terms of disclosing personal information, but the way this is written indicates that it's the advocate's responsibility and obligation, as always, to act in the best interests of children.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We'll move on to page 65. It's a PC motion.

**Ms. MacLeod:** I move that section 18 of the bill be struck out and the following substituted:

"Information

"18. The advocate may collect, use and disclose personal information while adhering to the principles established by the Freedom of Information and Protection of Privacy Act."

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Page 66, government motion.

**Mr. Zimmer:** I move that section 18 of the bill be amended by adding the following paragraph:

"8.1 The advocate may only disclose under subparagraph 8iii information that was received from a child or youth without the consent of the child or youth if the interest of the continued proper administration of justice in having the information disclosed outweighs the privacy interests of the child or youth in not having the information disclosed."

The rationale here is that the purpose of the amendment is to better protect the right to privacy of children and youth while supporting the administration of justice. The determination of whether the proper administration of justice outweighs the privacy interests will be made by the advocate.

#### 1130

**Ms. Horwath:** I just need some clarification. What the amendment basically says is that we are giving the advocate the responsibility to determine, in the balance of probabilities, what's more important: Is it more important to make sure that the information comes out, or is the information not that important juxtaposed against the rights of the child or advocacy for the child?

**Mr. Zimmer:** That is correct. The discretion is to be exercised by the advocate.

**Ms. Horwath:** Okay. I support that amendment.

**The Chair:** All those in favour of the government motion? Opposed? That carries.

Shall section 18, as amended, carry? All those in favour? Opposed? Carried.

That's section 18. Now we're going to go to section 18.1. The next motion, 68, addresses section 18.1—

*Interjection.*

**The Chair:** I'm sorry. My apologies. Number 67 is the next motion. It's an NDP motion.

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

"Records, etc.

"18.1(1) The advocate has the power to examine or copy any record or log book in the possession of an agency, service provider or facility for the purpose of performing his or her functions and powers under this act.

"Privilege

"(2) Nothing in this section abrogates solicitor-client privilege."

Again, it's just to clarify the access to records of the advocate, which came up in hearings.

**The Chair:** Any further debate?

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry. Number 68 is a PC motion.

**Ms. Horwath:** It's the same as mine.

**Ms. MacLeod:** Yes, mine is exactly the same, just one word change, so I think we'll move right on to 69.

**The Chair:** So we'll withdraw number 68.

Motion 69 is a PC motion.

**Ms. MacLeod:** I move that section 19 of the bill be amended by adding the following subsection:

“Other reports

“(2.1) The advocate may make any other reports to the Legislative Assembly that he or she considers expedient or advisable, and shall present them to the Speaker to lay before the assembly.”

I think that's a common sense resolution. It just gives her an ability to write any report that she thinks is advisable.

Recorded vote.

**The Chair:** Further debate? None.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That motion does not carry.

We'll move on to number 70. It's a government motion.

**Mr. Zimmer:** I move that subsection 19(4) of the bill be amended by striking out “at least 30 days”.

Again, the advocacy process should be free of political interference and free of the perception of political interference. This is the purpose of making the advocate an independent officer of the Legislature.

**Ms. Horwath:** I support this motion. I think that the minister has done the right thing by taking out what I called in my second reading debate “the spin cycle.” So I'm pleased to see it here. It's a good move. I support it.

**The Chair:** Any further debate? All those in favour? Opposed? Carried.

We'll move on to number 71. It's a PC motion.

**Ms. MacLeod:** I'm going to withdraw that motion.

**The Chair:** So 71 is withdrawn.

We'll move on to number 72, which is an NDP motion.

**Ms. Horwath:** I move that subsections 19(4) and (5) of the bill be struck out.

Again, I know that there's a requirement to provide reports, but—the government dealt with subsection 19(4), I believe. Isn't that the amendment we just did? They dealt with subsection 19(4), taking out the 30-days requirement.

**The Chair:** Yes.

**Ms. Horwath:** But for some reason they didn't take it out of subsection 19(5), and I don't understand why, so they're still saying that any reports that the advocate is indicating are appropriate to be presented still have to go through the spin cycle. They did half the job. They took away the spin cycle in subsection (4), but not in subsection (5). I don't understand the logic of that. I'm quite concerned about it. I don't know whether there's a reason why it's in subsection (5) and not in subsection (4). I'm asking that the government consider doing the whole job and taking the spin cycle out of both types of reports.

**Ms. MacLeod:** I just noticed that in government motion 73, it is.

**Ms. Horwath:** Oh, they do that?

**Ms. MacLeod:** Yes.

**Ms. Horwath:** I didn't have to be so mean.

**Ms. MacLeod:** They deserve it.

**Mr. Zimmer:** Thank you.

**Ms. Horwath:** Does that mean you're going to support my motion?

**Ms. MacLeod:** In any event, I'm comfortable supporting—

**The Chair:** Are you still moving your motion? Ms. Horwath is moving the motion on page 72.

**Ms. Horwath:** Recorded vote.

**Ayes**

Horwath.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry. The next motion is on page 73; it's a government motion.

**Mr. Zimmer:** I move that subsection 19(5) of the bill be amended by striking out “at least 30 days”.

**Ms. Horwath:** I support that motion.

**Ms. MacLeod:** In the famous words of my mayor, Larry O'Brien, “I agree. I agree. I agree.” I support it.

**The Chair:** I'll put the question on the motion. All those in favour? Opposed? That carries.

On page 74, it's an NDP motion.

**Ms. Horwath:** I move that section 19 of the bill be amended by adding the following subsection:

“Compliance

“(6) Where, in a report under this section, the advocate has made a recommendation that a ministry, agency or service provider carry out an action, the ministry, agency or service provider shall carry out the recommendation within the time frame set out in the report, unless the advocate agrees to another time frame.”

We heard loud and clear in committee and the hearings that there is no obligation in the bill anywhere for anybody to act on any recommendation or report of the advocate. That's just inappropriate. We have to set out in the legislation a requirement that the recommendations be acted upon. That's what this does, and I urge the government to consider supporting it.

**The Chair:** Any further debate? Ms. Horwath, you asked for a recorded vote?

**Ms. Horwath:** Yes, please.

### Ayes

Horwath.

### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Then the question is, shall section 19, as amended, carry? All those in favour? Opposed? Carried.

We'll move on then to the next motion, on page 75. It's an NDP motion.

**Ms. Horwath:** I move that section 20 of the bill be amended by adding the following subsections:

"Privilege

"(2) Subject to paragraph 8 of section 18, anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by the advocate is privileged as if the inquiry were proceedings in a court.

"Inadmissibility

"(3) Any information that is obtained by a service provider in contravention of the privilege is inadmissible in any court proceeding."

It's obvious what this does, so I'm not going to belabour it.

**The Chair:** Any further debate? None. You asked for a recorded vote?

**Ms. Horwath:** Yes, please.

### Ayes

Horwath.

### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Shall section 20 carry? All those in favour? Opposed? Carried.

We'll move on to the NDP motion on page 76.

1140

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

"Offences and penalties

"20.1. Every person who,

"(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the advocate or any other person in the performance of his or her functions under this act; or

"(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the advocate or any other person under this act;

"(c) wilfully makes any false statement to or misleads or attempts to mislead the advocate or any other person in the exercise of his or her functions under this act; or

"(d) fails to inform a child of their right to access the advocate or prevents or fails to allow access to the advocate,

"is guilty of an offence and liable on conviction to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both."

This amendment is put in place to provide some kind of penalty for persons so that it clearly indicates the seriousness of not co-operating with the advocate or not facilitating a child's access to the advocate. We heard in the hearings that this was needed. Children, particularly young people themselves, when they got up to the table and they were talking to us about some of the concerns that they had—on more than one occasion a young person said that there needs to be a penalty. There needs to be a fine. There needs to be a reason, there needs to be something that forces or that requires, or there needs to be something that ensures that the adults who are so in control of children's lives are compelled to abide by the law in terms of the office of the independent advocate. I don't think the government has covered that off in the bill. I think it needs to be there—I don't think it needs to be there; the young people think it needs to be there. That's why I put this motion forward and I really would hope that we consider seriously adding penalties to this bill.

**Mr. Zimmer:** I'd just like to say that investigations, by their nature, are both independent and impartial. The advocacy is not impartial. Here the advocate aims to work co-operatively with the involved parties and use informal methods of dispute resolution or moral suasion. The inclusion of penalties and offences is more in line with investigative powers and not consistent with this approach.

**The Chair:** Further debate? We'll have a recorded vote on the NDP motion.

### Ayes

Horwath.

### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That's not carried.

We'll move on to number 77, which is a PC motion.

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

“Offences and penalties

“20.1. Every person who without lawful justification or excuse, fails to co-operate with or obstructs the work of the advocate or the advocate’s staff is guilty of an offence and liable on conviction to a fine of not more than \$5,000.”

**Ms. Horwath:** I’m going to support this motion because I think it’s important to have a penalty section in the bill. Having said that, I received a similar response when I asked for language to be drafted of the \$5,000 amount and I didn’t think that fine was high enough to create the deterrent that we need to make people aware of how serious this issue is. So although I’m supporting it because my motion did not pass, and maybe with a smaller fine the government might support this one, the bottom line is that children were asking for this and we need to include it.

**The Chair:** Any further debate?

**Mr. Zimmer:** The argument that I made on NDP motion 76 I would make on PC motion 77.

**The Chair:** I’ll now put the question, on a recorded vote.

**Ayes**

Horwath, MacLeod.

**Nays**

Balkissoon, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We’ll move on to page 78. It’s a PC motion.

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

“Advisory committee

“20.2 The Lieutenant Governor in Council shall establish an advisory committee composed of children, youth, families, and service providers to offer advice and critique the work of the advocate.”

I think it’s fairly consistent with what we’ve heard during the course of the deliberations. I also think it’s consistent with several motions that the opposition has put forward that have failed throughout this clause-by-clause experience.

**Mr. Zimmer:** The government does not support this motion. The essence here is that the independence of the child advocate could be compromised if the government forms a committee to scrutinize the work of the advocate. The whole thrust of this thing is to make sure that the advocate is independent and can pursue and do what’s in the best interests of the child.

**The Chair:** I’ll now put the question.

**Interjection:** A recorded vote.

**Ayes**

MacLeod.

**Nays**

Balkissoon, Horwath, Oraziotti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

We’ll move on to the next motion—

*Interjection.*

**The Chair:** I’m sorry.

**Ms. MacLeod:** One of my motions has been ruled out of order, and I respect that, but could I just make a comment about it? It is about the Ombudsman Act. I believe that section 14 of the Ombudsman Act should be amended by adding:

“Children and families

“(1.1) For greater certainty, children and their families who are receiving services from the government or a service provider”—

**The Chair:** Are you speaking to motion 79?

**Ms. MacLeod:** Yes. I’m actually just making a comment; I’m not speaking to it. I’m just trying to make a comment to the government that I believe the natural step after this bill is passed is actually to amend section 14 of the Ombudsman Act.

**The Chair:** We’ll get to that in a moment, but first of all, I’ve just got a couple of questions with regards to some of the other sections of the act here.

*Interjection.*

**The Chair:** Let’s deal with section 21. Shall section 21 carry? All those in favour? Opposed? Carried.

Shall section 22 carry? All those in favour? Opposed? Carried.

Shall section 23 carry? All those in favour? Opposed? Carried.

Now we go to motion 79. I’m going to rule that out of order.

We’ll move on to section 24. Shall—

*Interjection.*

**The Chair:** We’ll go back to that in a second, but could we just do section 24? Shall section 24 carry? Carried.

Shall section 25 carry? All those in favour? Opposed? Carried.

Now we’re going to go back to motions 58 to 61.

**Mr. Zimmer:** Chair, may we have a few minutes’ adjournment? I make it about 13 minutes to 12. I just want my colleagues opposite to have a chance to—

*Interjection.*

**The Chair:** Okay. Let’s see if we can perhaps—we’ve got just over 10 minutes. We’re dealing with government motion 58?

**Mr. Zimmer:** Yes. Hold on a second.

*Interjection.*

**Mr. Zimmer:** With respect to government motion 58, I’d like to amend government motion 58. The amendment would be at subsection (3), where it says “Same.” I’ll read it in carefully:

“(3) Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advo-

cate with private access to children in care or reasonable private access to young persons in custody who wish to meet with the advocate.”

Just to point out the changes there, in the second sentence, we’ve struck out the word “a,” so it just reads “children”; we’ve changed “child” to “children.” And at the end of the sentence, where it now reads “private access to,” we’ve struck out “a” and changed “young person” to “young persons.” Those are the changes.

**1150**

**Ms. Horwath:** I appreciate the changes. Can I just ask through you, Mr. Chair, is that to cover off the idea that it’s not necessarily in response to a complaint from a particular child but that by changing to “children” and “young persons” the government is indicating that in the development of a review of a particular agency or report, they can actually enter these premises? Is that the purpose?

**Mr. Zimmer:** I’ll ask ministry counsel to respond to that.

**Ms. Crandall:** The concern was expressed that the subsection as worded only gave the right to meet one child. We proposed the amendment in order that the advocate could meet with more than one child or youth, which would give the opportunity to speak to children and youth in the facility.

**Ms. Horwath:** Okay. Can I just ask through you, Mr. Chair, what is meant by “unreasonable” and “reasonable” in the context of subsection (3)? I don’t understand what the words “unreasonable delay” and “reasonable”—

**The Chair:** I think Mr. Zimmer can answer that.

**Ms. Horwath:** That’s fine. I’m just curious.

**Mr. Zimmer:** I’ll take a stab, and then I’ll turn it over to ministry counsel. In the context of legislation and in common law and in legal circles and so on, “reasonable” and “unreasonable” are terms that a judge would ultimately sort out if someone argued that you’re being unreasonable or not being reasonable in something. Having said that, I’ll ask ministry counsel to expand.

**Ms. Horwath:** I would appreciate it.

**Ms. Crandall:** There is discretion on the advocate in this instance, but what this section mirrors is the rights of the child contained in the CFSA and the MCSA. The CFSA, in the rights of the child section, gives the child the right to private access, and the MCSA gives young persons in custody the right to reasonable private access. What we’ve done there is deliberately mirror the rights of the child that are already contained in legislation.

**Ms. Horwath:** I appreciate it, and I appreciate the attempt at amending the section. I am still concerned that there is no obvious right or ability for the child advocate to enter a premises in conducting a review. I don’t know whether it’s implied in this. Can I just ask, does the government feel it’s implied that entering premises and speaking to children can be done for the purposes of a review, or just on the complaint of a child?

**Mr. Zimmer:** I apologize, Ms. Horwath. I missed your—

**Ms. Horwath:** I’m just concerned that the legislation is still silent on the opportunity or ability of the advocate

to enter for the purposes of conducting a review, as opposed to responding to a request from a child to see an advocate.

**Mr. Zimmer:** Let me make three points for the record. First, it’s the advocate who will have the discretion to determine when a delay is unreasonable. That determination will be made by the advocate on the circumstances of the particular case. Second, and I want to be very clear about this, the advocate currently enters service provider facilities to conduct system reviews. This practice will continue under the legislation. The third point I want to put on the record is that the advocate has a statutory right to conduct system reviews and look into service systems, and the service providers have an obligation to co-operate. If issues arise in practice, there is an opportunity to bring regulations forward.

**Ms. Horwath:** I appreciate that, Mr. Chair. Can I just ask, through you, where in the legislation the advocate has the right, in the process of conducting a review, to access a place, a location, without unreasonable delay or with reasonable privacy. I don’t see it, and I’m asking legislative counsel to show me the part in this legislation where that right is articulated.

**Ms. Crandall:** I think the right is articulated in subsection 16(3): “Every agency or service provider, as the case may be,” has to provide the advocate with private access or reasonably private access. So I think there is the obligation on service providers there that if a child or youth wishes to speak to the service provider or the child, then they have to be allowed in.

**Ms. Horwath:** Okay, I’m still concerned, so I’m going to have to vote against this. I don’t think it includes the issue of the advocate being given the opportunity to access a premises, a place, a location, a facility for the purposes of a review. Maybe it’s a review of documents, a review of conditions, a review of health standards, a review of the cupboards to see if there’s enough food for the children; it’s not necessarily to speak to the child. I don’t think it’s articulated clearly in this legislation and I think it needs to be. Because it’s absent, I’m going to have to vote against it. I don’t think it covers off the areas that need to be covered off.

**Ms. MacLeod:** I too will be voting against it, based on my previous concerns. I do not feel they have been addressed in this most recent draft and amendment. Therefore, I will be voting against it.

**The Chair:** I’ll put the question with regard to the government motion on page 58. All those in favour?

I’ve just been advised by the committee clerk, could you read the motion into the record one more time?

**Mr. Zimmer:** The amended?

**The Chair:** Yes, the amended motion.

**Mr. Zimmer:** I move that subsection 16(2) of the bill be struck out and the following substituted:

“(2) An agency or service provider, as the case may be, shall afford a child or youth who wishes to contact the advocate with the means to do so privately and without delay.

“(3) Every agency or service provider, as the case may be, shall, without unreasonable delay, provide the advocate with private access to children in care or reasonable private access to young persons in custody who wish to meet with the advocate.”

**The Chair:** Thank you. A recorded vote has been asked for.

#### Ayes

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

#### Nays

Horwath, MacLeod.

**The Chair:** That motion carries.  
Motion 59, an NDP motion.

**Ms. Horwath:** I move that section 16 of the bill be amended by adding the following subsection:

“Same

“(3) Any agency, service provider, facility, teacher, social worker, peace officer or foster parent providing services described in section 13 shall ensure that a child or youth who wishes to contact the advocate can do so privately and without delay.”

This is just a change of onus on those providers to tell them they have to do it.

**Ms. MacLeod:** I support this motion. Although there is one word different in mine and you may want to proceed with it, I’m going to withdraw 60 and fully support 59 because they are essentially the same.

**The Chair:** Okay, so you’ve withdrawn 60 but support 59.

A recorded vote has been asked for.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Number 60 has been withdrawn; 61 is a PC motion.

**Ms. MacLeod:** I move that section 16 of the bill be amended by adding the following subsection:

“Further obligation

“(4) Every agency or service provider shall inform children, young persons, parents and guardians of the existence of the office at the time of admission to any out of home placement and at each plan of care meeting, and ensure that all access and communications with the advocate are private and unfettered.”

Mr. Chair, in the absence of a very strongly worded 58 resolution, I believe this needs to be carried and urge my colleagues to support it.

**The Chair:** Any further debate?

**Ms. MacLeod:** Recorded vote.

#### Ayes

Horwath, MacLeod.

#### Nays

Balkissoon, Orazietti, Qaadri, Rinaldi, Zimmer.

**The Chair:** That does not carry.

Shall section 16, as amended, carry? All those in favour? Opposed? That carries.

Shall the title of the bill carry? All those in favour? Opposed? That carries.

Shall Bill 165, as amended, carry? All those in favour? Opposed? Carried.

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

I want to thank everybody present today, including staff, for their help.

This meeting is adjourned.

*The committee adjourned at 1201.*

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