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Tuesday 22 April 2008

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Mardi 22 avril 2008

Standing Committee on Social Policy

Access to Adoption Records Act (Vital Statistics Statute Law Amendment), 2008

Comité permanent de la politique sociale

Loi de 2008 sur l'accès aux dossiers d'adoption (modification de lois en ce qui concerne les statistiques de l'état civil)

Chair: Shafiq Qaadri
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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 22 April 2008

Mardi 22 avril 2008

The committee met at 1542 in committee room 1.

ACCESS TO ADOPTION RECORDS ACT (VITAL STATISTICS STATUTE LAW AMENDMENT), 2008

LOI DE 2008 SUR L'ACCÈS AUX DOSSIERS D'ADOPTION (MODIFICATION DE LOIS EN CE QUI CONCERNE LES STATISTIQUES DE L'ÉTAT CIVIL)

Consideration of Bill 12, An Act to amend the Vital Statistics Act in relation to adoption information and to make consequential amendments to the Child and Family Services Act / Projet de loi 12, Loi modifiant la Loi sur les statistiques de l'état civil en ce qui a trait aux renseignements sur les adoptions et apportant des modifications corrélatives à la Loi sur les services à l'enfance et à la famille.

The Chair (Mr. Shafiq Qaadri): Ladies, gentlemen and colleagues, as you know, we're here for clause-by-clause consideration of Bill 12, An Act to amend the Vital Statistics Act in relation to adoption information and to make consequential amendments to the Child and Family Services Act.

I open the floor for any questions, comments or debate on any section of the bill. Please refer to that bill to begin.

Mr. Ramal, the floor is open for any kinds of questions, comments or reference to any section of the bill.

Mr. Khalil Ramal: First, I want to welcome everybody who's with us today, especially the privacy commissioner and many other stakeholders, and also those from the Ministry of Community and Social Services.

Mr. Chair, if you'd permit me, I would ask Peter Rusk and Brenda Lewis to come to the table. Mr. Rusk is the legal adviser for the ministry, and Brenda Lewis is a policy person in our ministry. So for any technical issues or technical problems, we want them around, if that's possible.

The Chair (Mr. Shafiq Qaadri): If that be the will of the committee, I'd invite them. Are you going to make some opening statements, or will you be on standby?

Mr. Peter Rusk: Be on standby.

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

Once again, are there any comments, questions, or debate or issues on particular sections of the bill? Or may we proceed to clause-by-clause consideration?

Mr. Khalil Ramal: I have no issues.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal. We'll begin with government motion 1.

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

"(0.1) the definition of 'child and family services review board' in section 1 of the Vital Statistics Act is repealed."

This motion will repeal the definition of the Child and Family Services Review Board, or CFSRB, from the Vital Statistics Act, as the provisions relating to the CFSRB—prohibition order, reconsideration or determination of abuse—will be repealed by Bill 12. Therefore, this definition will no longer be necessary in the Vital Statistics Act.

These are technical changes, because this board, before we put in the disclosure veto, was required for some abuse mechanism, when people go and appear before this board to complain or file a complaint. We don't see this as necessary after introducing it, if this bill passes.

The Chair (Mr. Shafiq Qaadri): Before I offer the floor to Mr. Prue and Mr. Sterling in turn, just to bring to the attention of the committee, we do have the privacy commissioner with us, who would also like to make a statement.

Mr. Michael Prue: I have a question, because there is a Conservative motion later on that will necessitate this remaining in place. Are we not prejudging that the Conservative motion—if the Conservative motion passes, we need to leave this definition in, do we not?

Mr. Norman W. Sterling: Can I ask a question? As I understand it, the Child and Family Services Review Board—there's another element or a name for it under the Child and Family Services Act. Does it continue to exist?

Mr. Peter Rusk: Yes, it continues.

Mr. Norman W. Sterling: My motion refers to that, Mr. Prue, so I think that this doesn't negate my motion.

Mr. Michael Prue: I'm trying to protect you here.

Mr. Norman W. Sterling: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Are there any further considerations, debates or comments on government motion 1? Seeing none, we'll proceed to consideration.

Those in favour of government motion 1? Those opposed? I declare the motion carried.

Shall section 1, as amended, carry? Those in favour? Carried.

Seeing as there are no motions so far brought forward for sections 2 and 3, I'll invite the committee to consider sections 2 and 3 to be carried as written. Those in favour? Those opposed? I declare sections 2 and 3 carried.

We'll now move to consideration of section 4, government motion 2.

Mr. Khalil Ramal: I move that subsection 48.1(8) of the Vital Statistics Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Copy of notice

"(8) Where the Registrar General gives the applicant the uncertified copies under subsection (5) or (6) or clause 7(a), he or she shall also give the applicant a copy of the notice that was submitted under subsection 48.4(3) by either or both of the birth parents, as the case may be."

This motion would strike out the version of subsection 48.1(8) found in the first and second reading version of Bill 12 and substitute another version in order to provide greater clarity and consistency to the subsections.

The new version of the proposed subsection 48.1(8) would specify that in circumstances where the Registrar General gives the adopted person copies of his or her original birth registration and adoption order, the Registrar General will also give the adopted person a copy of the no-contact notice in circumstances where the adopted person has promised not to contact the parents who submitted the notice. The change would provide consistency so that in all circumstances where the adopted person refuses to sign the no-contact agreement for the parents, the adopted person does not receive a copy of the no-contact notice.

I think from this motion it's very clear that if the adopted person refused to sign an agreement about a no-contact notice from the other side, he's not going to get the registration paper or the copy. Therefore, we brought these changes for clarity and to eliminate all the confusion about the translation of the past bill.

The Chair (Mr. Shafiq Qaadri): Are there any questions, comments, issues, debates?

Mr. Norman W. Sterling: I would hope legal counsel—either our legal counsel at the table or our legal counsel sitting across—will indicate if there's any problem, as Mr. Prue outlined before, with regard to later amendments. I take it you will warn us if they conflict.

Ms. Sibylle Filion: Oh, for sure.

Mr. Norman W. Sterling: Thank you.

1550

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sterling. Just to be clear, our legal counsel is present.

We'll now consider government motion number 2.

Those in favour? Those opposed? Carried.

I've been advised by our clerk of the committee, Mr. Katch Koch, that PC motion 3 will be deferred for consideration under the new section 8.1. If there are no objections, we'll move now to consideration of government motion 4.

Mr. Khalil Ramal: I move that subsection 48.2(1) of the Vital Statistics Act, as set out in section 4 of the bill, be amended by striking out "persons other than the applicant and the adopted person" and substituting "persons other than the applicant, the adopted person and a person whose name appears in the documents because of their involvement, in a professional capacity, in the adoption or birth registration."

The motion would strike out words in subsection 48.2(1) found in the first and second reading versions of Bill 12 and substitute other words in order to clarify that information about persons who are acting in their professional capacity is included in the information provided to a birth parent. For example, information regarding a person such as the doctor at the birth, the judge who issued the adoption order and the division registrar who signed the birth registration could be released if this motion carries.

I think this motion is very clear. If there are any questions, I'm happy to entertain them.

The Chair (Mr. Shafiq Qaadri): Again, the floor is open for any commentary. Seeing none, we'll consider government motion 4. Those in favour? Those opposed? Government motion 4 is carried.

We're bow considering government motion 5. Mr. Ramal.

Mr. Khalil Ramal: I move that subsections 48.2(4) and (5) of the Vital Statistics Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Effective notice of preferred manner of contact

"(4) If a notice submitted under subsection 48.3(1) is in effect and sets out the manner in which the adopted person wishes to be contacted by the applicant, the Registrar General shall give the applicant a copy of the notice when the Registrar General gives the applicant the information described in subsection (1).

"Effect of notice of wish not to be contacted

"(5) If a notice submitted under subsection 48.4(1) is in effect and states that the adopted person does not wish to be contacted by the applicant, the Registrar General shall not give the information described in subsection (1) to the applicant unless the applicant agrees in writing not to contact or attempt to contact the adopted person, either directly or indirectly."

This motion would strike out the version of subsections 48.2(4) and (5) found in the first and second reading versions of Bill 12 and substitute another version of these subsections in order to clarify their intent.

The proposed new version of subsection 48.2(4) provides that the Registrar General is to give a copy of notice regarding contact preference to the birth parent or applicant. If the notice specifies the preferred manner in which that birth parent is to contact the adopted person, the proposed new version of subsection 48.3(5) provides that the Registrar General is to give a copy of a no-contact notice to the birth parent or applicant if a no-

contact notice specifies that that birth parent is not to contact the adopted person.

These changes would clarify that a birth parent should only get a copy of a notice if it applies to him or her, but not if it applies to other birth parents.

Also, I think this motion came to clarify the intent of the section.

The Chair (Mr. Shafiq Qaadri): Any questions or comments? Seeing none, we'll proceed to consideration.

Those in favour of government motion 5? Those opposed? Motion 5 carried.

Government motion 6. Mr. Ramal.

Mr. Khalil Ramal: I move that subsections 48.2(8) and (9) of the Vital Statistics Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Copy of statement

"(8) If a disclosure veto submitted by an adopted person is in effect and prohibits the disclosure of information to the applicant, the Registrar General shall:

"(a) advise the applicant that a disclosure veto is in effect; and

"(b) give the applicant a copy of any statement intended for the applicant that may have been included in the disclosure veto under subsection 48.5(7).

"Same

"(9) If, at the time of the application, a disclosure veto prohibiting disclosure to the applicant has ceased to be in effect under subsection 48.5(13), the Registrar General shall,

"(a) advise the applicant of this fact; and

"(b) give the applicant a copy of any statement intended for the applicant that may have been included in the disclosure veto under subsection 48.5(7)."

This motion would strike out the version of subsections 48.2(8) and (9) found in the first and the second reading versions of Bill 12 and substitute another version of these subsections in order to clarify their intent. The proposed new version of 48.2(8) clarifies that the Registrar General is only to advise the birth parents or applicant of the disclosure veto and to give to the birth parent a copy of any statement included in the disclosure veto if the disclosure veto applies to that parent. The proposed new version of 48.2(9) clarifies that if a disclosure veto has ceased to be in effect as a result of the death of the adopted person, the Registrar General is only to advise the birth parent or applicant of this fact and give a copy of any statement included in the disclosure veto if the disclosure veto applies to that birth parent. These changes would clarify that a birth parent is only to be given information with respect to a disclosure veto that applies to that birth parent but not if it applies to the other birth parent whom the veto does not pertain to.

The Chair (Mr. Shafiq Qaadri): Are there any further considerations?

Mr. Norman W. Sterling: I just have a question on (9). I assume if the Registrar General knows that the party has died and, as I understand under Bill 12, the veto disclosure is no longer valid, so the person applies, and I read it that the Registrar General tells them that the person has died. Is that right?

Mr. Khalil Ramal: Unless you are asking for the information. The disclosure veto does not give any information to anyone except the people whose names are on the document, whether birth parents or the adopted person. So if you ask, yes, you get the information, but the Registrar General is not going to notify anyone unless you ask for it.

Mr. Norman W. Sterling: But let's say a child asks about the natural mother, and the mother has died. So I read in this that the Registrar General advises the fact that your natural mother has passed away, and then it says "give the applicant a copy of any statement intended for the applicant that may have been included in the disclosure veto." They give the health information. Let's say there was health information.

Mr. Khalil Ramal: Yes, whatever is contained in that paper depends—

Mr. Norman W. Sterling: That's what that (b) is.

Mr. Khalil Ramal: Correct.

Mr. Norman W. Sterling: But it doesn't say you disclose the identity of the—

Mr. Khalil Ramal: To my knowledge, and I would ask the policy people to comment if I don't explain it very well, when you impose the disclosure veto, you state on your statement what you want disclose or not disclose. When you die, I guess the Registrar General is permitted to disclose only the information you permit him to disclose after your death.

1600

Mr. Norman W. Sterling: Can you clarify that for me?

Ms. Brenda Lewis: At time of death, the—

The Chair (Mr. Shafiq Qaadri): I would invite you to please identify yourself for the purpose of Hansard and proceed.

Ms. Brenda Lewis: Brenda Lewis, with community and social services.

When the disclosure veto is filed, it's in place until time of death. At time of death, the disclosure veto expires, so the identifying information may be released at that time along with the disclosure veto and any pertinent information that may have been filed with the disclosure veto at that time.

Mr. Khalil Ramal: Yes, whatever information you filed at that time.

Mr. Norman W. Sterling: You're just assuming—why wouldn't you say you would disclose the identifying information in this clause?

Mr. Peter Rusk: I'm Peter Rusk. This specific clause doesn't disclose the information. This specific clause just says that the disclosure veto ceases to be in effect. When that happens, in addition to disclosing that information, the Registrar General has to advise the person of the death and provide a copy of the statement that was included with the disclosure veto.

Mr. Norman W. Sterling: So then they have to make another application, I assume, to get the identifying information?

Mr. Peter Rusk: My understanding is that it would be part of the same process. They apply for the information and then the Registrar General presents them with this information if in fact the person who filed the disclosure veto is deceased.

Mr. Norman W. Sterling: It just seems awkward, the way you've done it. I would have put three things down, and then the legislation becomes clearer as to what happens when an applicant goes and finds out that the person has passed away:

(1) You passed away.

(2) Here's the identifying information.

(3) Here is the additional information filed with the veto.

Mr. Michael Prue: I just want to be clear. I think I already know the answer, but I just want it stated for the record: This applies when people die. They must die within the province of Ontario for someone to be notified. If the birth mother were to die in Alberta, Manitoba, the United States, England, Zimbabwe or anywhere else, there would be no notification process?

It must be a hard question, Mr. Chair.

Mr. Peter Rusk: As part of the regular process, the Registrar General would know of deaths that occur in Ontario, but if a death occurred elsewhere, the Registrar General would have to become aware of that death by someone filing information that was satisfactory to the Registrar General.

Mr. Michael Prue: Let's start with Canada first. What obligation does British Columbia have to notify Ontario of the death of a person who may have been born, or maybe not even born in Ontario but who gave birth in Ontario once? What obligation is there? Is there any obligation whatsoever?

Mr. Peter Rusk: I don't know of British Columbia's obligation to file information.

Mr. Michael Prue: Any? Quebec's obligations?

Mr. Peter Rusk: I don't know of other provincial obligations to file information.

Interjection.

Mr. Peter Rusk: I have been advised that there's an interprovincial protocol that if another province is aware that someone who died in their province was born in Ontario, they advise Ontario of the death.

Mr. Michael Prue: I'll use the example of Marilyn Churley. She was here yesterday. I'm sure she wouldn't mind. She was born in Labrador, the province of Newfoundland and Labrador. She gave birth in that province. She found her son eventually in Ontario. She's lived in British Columbia. I hope she lives for 100 years, but if she doesn't and dies in Quebec—and had never found her son—who would know?

We have mobility rights in this country. You can move to any province, and people do. I'm sure there's people in this room who've lived in another province. I haven't; oh, yes, I did live in Quebec for awhile. People move. Even if you were not born here, but have lived here and possibly given birth here, how would someone find out? Or I take it they just wouldn't?

Interjection: How would someone find out what?

Mr. Michael Prue: How would somebody find out that their birth mother had died so that they could access this information?

Mr. Jacob Bakan: Mr. Chair, my name is Jacob Bakan and I'm legal counsel with the Ministry of Government and Consumer Services. With your agreement, perhaps I could speak to this matter.

The Chair (Mr. Shafiq Qaadri): Please.

Mr. Jacob Bakan: The Deputy Registrar General is here. My understanding is that there are interprovincial agreements between the provinces. In the case that someone died in Canada, typically in the ordinary course of things the Deputy Registrar General would be advised that that person had died. If the person died outside of Canada, in that case there would be no automatic notification, and if the applicant happened to have evidence and maybe the applicant had separately located the person, then they could provide that evidence to the Deputy Registrar General. I understand that in many circumstances that would not be available, but in certain circumstances, if they happen to have evidence, that could be considered under the legislation on a case-by-case basis by the Registrar General or the Deputy Registrar General to determine whether in that case there was satisfactory evidence that the person had died.

Mr. Michael Prue: Let me take it outside of Canada. It still seems convoluted. It still seems very likely that many people will never find out their birth parent has died, even in Canada. What if they die outside of Canada? I would take it no one would ever be notified and that person might live their entire life without knowing that the birth mother has died and that they can now have access to the file.

Mr. Jacob Bakan: My understanding is that there's no automatic notification process. There's no agreement with other jurisdictions. The Deputy Registrar General has indicated that in some cases she might be notified by certain jurisdictions, but certainly not universally all over the world. In those cases where she didn't receive notification from another jurisdiction, it would have to be considered on a case-by-case basis, if the individual applying happened to be able to produce evidence of some sort and was aware, independently, of the fact that the person had died.

Mr. Michael Prue: But if a person is trying to access the file and thinks, "My God, my birth mother must be 90 years old, if she were still alive," she may not be alive, she may be dead. But there would be then no way of accessing the file because you'd have no way of knowing whether the person was alive or dead. Have I got it wrong, or is that right?

Mr. Jacob Bakan: No. My understanding is that under the bill there has to be evidence before the Registrar General or the Deputy Registrar General to be able to make that determination, and therefore—

Mr. Michael Prue: And if you don't know who that person is, then how could you ever have evidence?

Mr. Jacob Bakan: I have indicated the circumstances in which that evidence—

The Chair (Mr. Shafiq Qaadri): There are three requests to speak: Dr. Jaczek, Mr. Sterling and then Mr. Ramal.

Mr. Michael Prue: Okay. Thank you. I'm not finished. Go ahead; I'll come back.

The Chair (Mr. Shafiq Qaadri): I offer the floor to you, Dr. Jaczek, if you'd like it.

Ms. Helena Jaczek: Yes, thank you. I understand that the disclosure veto can also be rescinded at any time. Does this section also apply to that case? Someone changing their mind, rescinding the disclosure veto—at that point does the Registrar General advise the applicant of this fact, as in (a) and also in (b)? Do they then give the applicant a copy of the statement etc.?

Mr. Peter Rusk: No, they do not.

Ms. Helena Jaczek: They do not. So could you just explain to me for my general edification, if someone rescinds the disclosure veto, what happens?

Mr. Peter Rusk: If they rescind the disclosure veto, once the Registrar General matches that rescission with the actual file, then the disclosure veto is no longer in effect.

Ms. Helena Jaczek: And it would require an applicant to make a new application?

Mr. Peter Rusk: Yes.

1610

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

Mr. Norman W. Sterling: If somebody exercises a veto disclosure, presumably then you have an ability to contact that person. When somebody exercises an application or fills out an application or whatever, will you be asking them for a contact number or whatever?

Ms. Brenda Lewis: Are you asking whether or not when they rescind the disclosure?

Mr. Norman W. Sterling: Not rescind; when they register. They've got to register. They've got to do a positive act to have a veto. They estimate that that could be 3% to 5% of the 500,000 files there are, or whatever it is. You may have 15,000 vetoes, which isn't a big number overall. Presumably when somebody registers a veto, they're going to give you a phone number or they're going to give you an address.

What I fail to understand in the legislation—maybe you have regulatory power to do this; I don't know. But what I would like to see is, if somebody comes in and says, as Mr. Prue has pointed out, "My mother would be 90 years old at this point in time. In all likelihood she's deceased. She exercised the veto, but now I want to know whether or not she has died." Is there any obligation on the registrar to make the phone call?

Mr. Khalil Ramal: I think that violates the whole principle of the disclosure veto. Unless the birth parents open or change their minds, I think the Registrar General is not allowed to give the information to the adopted person or adult regardless.

Mr. Norman W. Sterling: That's not what I'm saying.

Mr. Khalil Ramal: I know. Let me continue. Therefore when they are deceased, or they have died, they have no mechanism for the Registrar General to provide this information. How do you know whether or not she has died if you have no mechanism to know, if they put the disclosure veto. Therefore, I guess the only person allowed to ask for information is if his or her name appears on the birth registration. Otherwise nobody is allowed to do it.

Mr. Norman W. Sterling: Look, is this tough? Maybe I think it's too simple. You have 15,000 vetoes registered. Presumably you have the names of the people who registered those vetoes and the connection to the adoptive child in some way. If the adoptee walks in and says, "I think my mom probably has passed away. I'm now 75 and my mom is probably 95 if she's still alive, and most people are not with us at that age. Registrar, as you don't seem to have a record of her death—she may have gone to another jurisdiction or she may have exercised this veto from another jurisdiction—can you make an attempt to see if she is dead?"

Mr. Michael Prue: If you're 75, you need to know.

Mr. Norman W. Sterling: Why wouldn't you put—

Mr. Jacob Bakan: Perhaps I can speak to this. My understanding is that from a practical perspective, the experience that the office of the Registrar General has had in these circumstances is that some people do provide their contact information and some people do not provide their contact information when they apply for these. Some people do not want to be contacted by anyone, presumably, and that's why they don't include any contact information.

If your question is, is there an obligation under the act for the Registrar General to follow up with individuals, the answer is no. There's no such obligation under the bill.

Mr. Norman W. Sterling: Even if there is contact information on file.

Mr. Jacob Bakan: There's no obligation under the bill for the Registrar General to make followup contact.

Mr. Norman W. Sterling: Why don't you do that? Just policy? Didn't think of it?

Ms. Brenda Lewis: The policy intent in the whole bill is to open records and allow personal control of information. It was looked at when we were introducing the disclosure veto. A person had made a choice to file that veto. It was up to them, and we gave them the option, to rescind the disclosure veto. We felt at that point that the policy had met the need of the bill while protecting privacy.

Mr. Norman W. Sterling: The whole thrust of this bill is to open as many records as possible while respecting the court's ruling and the charter privacy rights, but the bill clearly says that after the death of the person who is exercising the veto, that ends. How on earth does the other party know? There's no way to know. The only connection is through the Registrar General.

Ms. Brenda Lewis: And as indicated by my colleague, in some cases we won't know that the connection has been made, that death has occurred.

Mr. Khalil Ramal: It doesn't comply with the intent of the bill, which is intended to provide the privacy of the person. As has been mentioned, when some people put in their disclosure veto, sometimes they don't give contact information. Therefore, any spot will open a loophole in the whole bill; then we'll go back to square one, where we started.

I guess it's an obligation of the person to keep searching. If the other side—the parents—die, then the disclosure veto would die with them. Otherwise, there's no mechanism in the bill to exercise a search mechanism for either side, the birth parents or the adopted adult.

Mr. Michael Prue: I just want to be sure of the government intent here, then. A person lives their whole life till they're 70 or 75 years of age never knowing the name of their birth mother, never having met them because there's a veto, and the government's bill is to intend that if that person dies in a jurisdiction other than Ontario, they may never, as long as they live, even if they live to 100, find out who their mother was, because they died in another jurisdiction. That's the intent of your bill?

Mr. Khalil Ramal: Yes.

Mr. Michael Prue: Okay.

Mr. Khalil Ramal: The bill only applies in Ontario, and then interprovincial jurisdictions can share information. It's a part of the privacy act, and we cannot violate it.

Mr. Norman W. Sterling: I think we should deal with the rest of the amendments. In the interests of disclosure and the intent of the bill—the intent of the bill is that after death people have the right to then get disclosure.

Mr. Khalil Ramal: Correct.

Mr. Norman W. Sterling: If that's what you're intending to do, then you should do everything you can to—

Mr. Michael Prue: How can you apply for a death certificate if you don't even know the person's name?

Mr. Khalil Ramal: You could apply as an adopted adult and continue to apply for more information and, with hope, the other side will supply the information. If the parents died, the disclosure veto would automatically die with the death of the person who put in the disclosure veto, so then you get the information. As has been mentioned, there are interprovincial jurisdictions that can share the information of the death. If somebody leaves the country, I guess we have no jurisdiction over that person who leaves the country.

Mr. Norman W. Sterling: I'm trying to help you out here, but it doesn't seem that—

Interjection.

Mr. Norman W. Sterling: Okay.

The Chair (Mr. Shafiq Qaadri): Mrs. Sandals.

Mrs. Liz Sandals: I'm just sitting here listening to the discussion, and I understand that everybody would like disclosure on death. I don't get a sense that anybody's arguing with this. It's just the capacity to give that information. If the Ontario Registrar General doesn't know the information and has no reasonable way of finding it out because they've got no contact information either, I'm not sure how they can share information that they don't have and that they have no reasonable expectation of ever having.

Mr. Norman W. Sterling: But they do have information. They have contact information. They just said that in some cases they do and in some they don't. I say, some is better than none.

Mr. Khalil Ramal: But if the Registrar General knows the information, they will release the information automatically to the adult adoptees. Automatically, when the person who put the disclosure veto dies, and with the knowledge of the Registrar General, the whole disclosure veto would be nil. Then they would release the information to the person who's asking for it, especially if his or her name appears on the birth registration. That's why there'd be no information available to the Registrar General in order to provide to anyone, unless he or she knows about the deceased person. So that's why we'd be violating the whole structure of the bill if we open it up to an assumption.

1620

Mr. Norman W. Sterling: That's not the argument. In terms of the 15,000 vetoes that will be registered—I'm eyeballing that number—14,000 of them will be people who live in Ontario and whose deaths will become known to the Registrar General. What Mr. Prue and I are concerned about is the other 1,000. Let's say that of those 1,000, the Registrar General has contact information on 500 of them. Let's say that half of them provide it—500. Why shouldn't the applicant be able to say to the Registrar General, "My mom has to be 80-plus by now"—or whatever the number is you want to fix; "Could you please make an attempt to contact her or people who know her to determine whether she's still alive or not?"

Mr. Khalil Ramal: But see, it would be going against the direction of the intent of the bill.

Mr. Norman W. Sterling: No, it isn't.

Mr. Khalil Ramal: It is.

Mr. Norman W. Sterling: It's totally in line. The person—

Mr. Khalil Ramal: No. Mr. Sterling, Mr. Prue, either you go with a bill for privacy and a disclosure veto or not. If you want to give the authority to the—

Mr. Norman W. Sterling: This is not a spin contest. We're talking about real facts and what happens. The intent of your bill is that when somebody dies, it opens the records. All we're saying is that the poor person who wants to get the information has no way of knowing whether the person has died or not died. The only person who has contact is the Registrar General.

You're affecting probably fewer than 1,000 files and saying to them, "If somebody comes in and asks for information as to whether the veto is still in place, could

you please try to make a contact to see if the person who exercised the veto is alive?"

Mr. Khalil Ramal: According to the bill and to the disclosure veto act, the Registrar General is not allowed to give any information without any identification and assurance of whether that person died or is deceased. Therefore, he cannot, or she cannot, provide any information—

Mr. Norman W. Sterling: I'm not asking that you give any information to the applicant at all. All I'm saying is, have the Registrar General make the phone call and find out whether the person's dead or alive. If the person is dead, then the Registrar General satisfies himself that the person is dead and then he can release the information.

Mr. Khalil Ramal: Yes, release the information if he knows or she knows that the person died. This is automatically included in the bill. It is. Yes.

Mr. Michael Prue: I don't think you're getting what we're trying to say. I'll make something right up here on the spot.

A person of Italian descent gives birth and lives in the province of Ontario while giving birth and then subsequently returns to Italy, where she lives to the ripe old age of 90 and she dies. They would never know, in the province of Ontario, that she went back to Italy or that she died in Italy, but there may be a contact. So if they phone up the contact and they talk to somebody in the household: "Is Maria"—I don't know; pick a name—"still alive? Is she still at that residence?" and the guy says: "No, she died in Italy a couple of years ago," then they can start to make the necessary calls to confirm that she has died. That's what we're trying to find out: that that person who is 70 years of age or something will know that they can then apply for their birth records, having the registrar confirm, through a couple of phone calls, that the person is dead. I don't see any great difficulty in this.

Mr. Khalil Ramal: The responsibility of the Registrar General—if the information is available to him or to her—is to provide it to the other side if they apply for the information. Otherwise—

Mr. Michael Prue: How do they apply when they don't even know the name? "My mother's 90 years old. She must be dead by now. I don't know what her name was." How do they apply for a death certificate? That's what I don't understand in your statement. How do they apply? If I apply for a death certificate for someone whose name I don't know, they're going to send me away pretty fast. I would too.

Ms. Brenda Lewis: Brenda Lewis from Community and Social Services.

One thing that we were trying to balance when we were developing the policy in the bill was privacy for all parties. In the event that the government starts contacting people, it does heighten the risk to privacy. If a person has filed a disclosure veto, we're respecting their personal right to their privacy. If we start contacting people and someone else picks up the phone, for example, and you say, "I'm trying to find out if this person is dead or still alive," it could raise the questions, "Why are you calling? Who is calling? You're going to have to identify yourself." It could start infringing on the privacy of the individual who has already registered a disclosure veto.

The practice that we currently have in place is not inconsistent with other processes that the Ontario Registrar General currently uses in matching birth certificates and death.

Mr. Norman W. Sterling: You do that now in our current adoption registry. You phone people up, out of the blue, and you say, "Do you want a match?" You've been doing that since 1979 and now you're objecting to doing this for probably 50 people a year? Do you put an age limitation on it of some sort?

Ms. Brenda Lewis: The adoption disclosure registry that we put in place under the previous legislation is a matching service. All people on that registry have already voluntarily placed their information on the registry, so it's already implied consent.

Mr. Norman W. Sterling: Okay, I give up.

The Chair (Mr. Shafiq Qaadri): Mr. Prue, any further comments or questions? The government side? No? Fine. We'll now move to consideration of government motion 6.

Those in favour? Those opposed? Motion carried.

For similar reasons to PC motion 3, now with PC motion 7, I'll postpone its consideration to the enabling section, section 8.1, and also postpone consideration of this amended section 3.

I will now move to consideration as a group, having received to date no further amendments to sections 5, 6 and 7, inclusive. If there be no amendments being brought forward right now, we'll consider that as a group. Those in favour of—yes, Mr. Sterling?

Mr. Norman W. Sterling: Just a minute: You don't want to stand this down to have another look at it—the argument we brought up? Okay, that's fine. Go ahead.

The Chair (Mr. Shafiq Qaadri): We'll now move to consideration of sections 5, 6 and 7, inclusive. Those in favour of sections 5, 6 and 7? Those opposed? Sections 5, 6 and 7 carry.

We'll now move to consideration of section 8, NDP motion 8.

Mr. Michael Prue: I move that section 48.5 of the Vital Statistics Act, as set out in section 8 of the bill, be amended by adding the following subsections:

"Expiry of disclosure veto

"(12.1) A disclosure veto registered under this section shall expire on the 10th anniversary of the day it comes into effect.

"Renewal of disclosure veto

"(12.2) A person who submitted a disclosure veto under subsection (2) or (5) may submit to the Registrar General a renewal of the disclosure veto at any time during the year prior to its expiry and subsections (7), (11), (12), (12.1), (13) and (14) apply with necessary modifications to the renewal.

"When renewal in effect

"(12.3) A renewal of a disclosure veto comes into effect upon the expiry of the previous disclosure veto."

If I may explain the rationale for this: We heard five deputants yesterday speak, including Bastard Nation: The Adoptee Rights Organization, the Coalition for Open Adoption Records, Parent Finders, Marilyn Churley and the Canadian Council of Natural Mothers, and they all recommend that there be some kind of time frame attached to the disclosure veto. Part of the rationale that they made was in terms of what we just debated in the previous motion. What do you do when you cannot confirm deaths? What do you do with those small number of people who may die in foreign jurisdictions or may fall through the cracks, either in Ontario or by being deceased in a jurisdiction with whom we have some kind of protocol, whether it be in Canada or in the United States?

What this is intended to do is to have a veto in effect for 10 years, which I believe will satisfy the requirements of the Belobaba decision. It is renewable, so that any person can renew it—they can renew it every 10 years—but it would also make it very possible, where a person does not renew it due to death in a foreign jurisdiction, that it can be opened. The registrar may make every effort in the year before to send out the information to the last known address or to attempt to contact the people to see whether they want to keep the veto in effect, but if they decide not to have the veto in effect, it would render it moot.

1630

I'm suggesting that this is what was done in some parts of Australia, and I believe New Zealand, for at least the first 10-year period to satisfy their privacy concerns. We saw in those jurisdictions that only a limited number of people sought to do it in the first place, but we also saw that in those jurisdictions where people died in foreign jurisdictions, the records could be unsealed.

I'm trying to be fair here to both groups. I'm trying to be fair to birth parents who do not want to be disclosed and children who do not want their birth parents to contact them. To get back to what the Conservatives are going to put in later from the children's aid society, which I think is a good motion, it allows for it to be continuing provided there is a continuing will upon the person. It will make it very easy then for people, if it is not renewed, to determine whether their birth parents are still alive or whether their birth parents no longer wish to have the veto in effect.

I am just a little bit antsy about having this stained mark for all time on a piece of paper, the stained mark being a signature, when attitudes could change, when people may not think about it or when people may be deceased. If we're truly trying to make this open and protect at the same time, it is my view that having an expiry date, as they did in other jurisdictions, is a far better way than to have it done for all time.

I'm asking the committee to consider this because I do believe it meets the test of what Judge Belobaba had to say, and it still allows people, if they wish, every 10 years for 50 years or more to keep it sealed, to do so. But it would allow, in the case of people becoming deceased or moving to other jurisdictions or any number of factors, to have an open adoption record, which I think was the intent of the Legislature and is still the intent of the Legislature.

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments?

Mr. Norman W. Sterling: I was talking to the privacy commissioner when I came out of the meeting, and it was this particular motion that she would like to have some comment on. I think it's only fair that she be given that opportunity, given that this wasn't part of the bill and part of our proceedings before we had public hearings yesterday. She didn't see a need to come in front of the committee at that time, but gave us a written brief. I guess I'm intervening and asking on her behalf whether she could have five minutes of our time to put her views on this particular issue.

The Chair (Mr. Shafiq Qaadri): Mr. Sterling has asked the privacy commissioner, who is with us, to come forward to testify. I need unanimous consent for that to take place. Do I have unanimous consent for that?

Mr. Khalil Ramal: Agreed.

The Chair (Mr. Shafiq Qaadri): Therefore, I would invite the privacy commissioner, Ms. Cavoukian, to please come forward.

Dr. Ann Cavoukian: Thank you very much, Mr. Chair, ladies and gentlemen of the committee. I apologize for this impromptu appearance. It was truly unexpected, but I learned of this motion just earlier today and I felt the need to comment. I apologize, Mr. Prue, but I strongly object to this motion for the following reasons.

The intent of filing a disclosure veto is to protect information, to protect the identity of whoever is filing the disclosure veto. That's very clear. Having that renewable after 10 years places a requirement for a positive action to take place on the part of that individual. These individuals may be very elderly by the time that time period arises.

In the privacy literature there's a finding that the default rules. What that means is, whatever the default action is, that is going to be the action that prevails. So if you have a disclosure veto in place but it must be renewed in 10 years, rest assured that people are either going to forget, they're going to become elderly and forget for other reasons which plague us all—there are going to be many reasons why they may overlook the need to repeat that action. I assure you that people who file a disclosure veto don't take this lightly.

As you know, when I appeared before the committee in 2005, I believe, I spoke to you of the many letters and e-mails and communications I had received from individuals who wanted their privacy protected and wanted the ability to file disclosure vetoes. They take this very seriously. I think an expectation of having them have a system in place that they're going to BF this, bring it forward in 10 years and know that they have to repeat this is too strong an expectation. It also flies in the face of the intent of the disclosure veto, which is one of keeping

information contained and protected. That is the wish of these individuals. I submit to you that there was no question in Judge Belobaba's mind that there were any restrictions around the extension of privacy to these individuals. He didn't say, "Place some limitations around it," the conditions around which the disclosure veto may be functional, because it's going to be, first of all, a small percentage of people who exercise the disclosure veto, as we've seen in other jurisdictions.

The fact that very few people renewed the disclosure veto in the jurisdictions, as Mr. Prue mentioned, comes as no surprise because, once again, the default rules. It's like negative billing. You forget to take an action, and whatever the default is, which would be non-renewability of the disclosure veto, that action would prevail. Expecting a positive action to be taken on the part, especially, of increasingly elderly people is too high an expectation—even if they were younger, but clearly there can be devastating impacts of the absence of that action being taken by someone who might be in their seventies and eighties. But, rest assured, the damage that could arise by their failing to do so could be enormous. At this time in their life when they should be enjoying, hopefully, a care-free life and enjoying their children and grandchildren, this is the one piece of information they have been so desperately trying to protect from their family, for their reasons. It's not our business to infer the reasons. So I'm asking you not to allow this motion to carry. I think it will have devastating consequences.

I personally don't believe that Judge Belobaba would even have considered this. He talked about the rights of individuals, who in this case are in the minority, being as important as those of others who, rightfully, want to gain access. This was the balance that he proposed.

So I thank you very much for allowing me to speak. I know it was unexpected. I'm very grateful for that. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Cavoukian, for your presence and testimony. I would once again open the floor for any further questions or comments. We'll have Mr. Prue and then Mr. Ramal.

Mr. Michael Prue: I tried to read the Belobaba decision when it came out—not recently. I don't remember this issue being canvassed within the four corners of the debate, about having a renewable veto. I don't remember it being canvassed or anybody talking about it, or talking about the Australian or New Zealand experience.

Dr. Ann Cavoukian: Precisely, Mr. Prue. It wasn't canvassed because the expectation was that the decision is made on the basis of someone turning their mind to whether they want the information protected or not, their privacy protected or not. Once the decision is made, the expectation was that that decision would prevail.

If there had been any contemplation that there should be restrictions placed on the decisions, such as a renewability option, Judge Belobaba, who reviewed everything associated with this, would have addressed it. He did not. He went to great lengths to say that the bill, as it was introduced, absent a disclosure veto, flew in the face of privacy. He in fact strengthened privacy rights in his decision by elevating it to a different level than had existed before. The government did not appeal his decision, so that is the court ruling; that is what stands. It's a very strong position supporting the privacy rights of these individuals.

Mr. Michael Prue: You were also in the room and you heard the previous debate around someone of 70 or 75 years of age. Assuming that his parents, or particularly the birth mother, must now be deceased, do we just tell them, "Go home and forget it. That's life"?

Dr. Ann Cavoukian: I think if you want to address that issue, which I understand you do, then you address it in that context, not by placing restrictions on the disclosure veto which extend to people who are living. I'm speaking for people who are alive, and I want to protect and uphold their wishes. So I think it's another instrument you need if you want to deal with those who are deceased.

Mr. Michael Prue: Because that was the intent of this instrument, so that people—we would know then if they were dead because it wasn't renewed.

Dr. Ann Cavoukian: I appreciate that, and I don't mean any disrespect, but I think it's a backdoor approach to how to deal with that issue. If you want to deal with that issue, which I understand you do, then I think you have to find a vehicle that addresses that issue, as opposed to this way, which will touch the lives of people who are alive and will restrict their privacy. That's the only part I'm objecting to.

1640

Mr. Michael Prue: Just one last question: As the privacy commissioner, you would not object if we could find another instrument, an instrument that allowed the Registrar General to investigate beyond a certain age, say 80 or 85 years of age, of the birth mother or birth parents, that someone could come in and say, "I don't know what their name is, but I must assume there is a strong likelihood that they'll be deceased. Could you check into that?" You wouldn't have any difficulty that would be an invasion of privacy if they merely confirmed yes or no that they had found information of their being deceased?

Dr. Ann Cavoukian: Mr. Prue—

Mr. Khalil Ramal: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Ramal on a point of order, if it is a point of order.

Mr. Khalil Ramal: The privacy commissioner had been asked to comment on that specific point. I think she made her deputation. I guess it's unfair to ask her to comment about different issues.

Mr. Michael Prue: It's my last question. I mean, if you want to shut down the debate, go ahead.

Mr. Khalil Ramal: No, no. I'm not—

The Chair (Mr. Shafiq Qaadri): Mr. Ramal, I don't think, as Chair, I would have jurisdiction over her remarks, as we have invited her to speak before the committee. I don't think I can get into the subject matter control. I'll have to disallow that point of order and I would invite Mr. Prue and Dr. Cavoukian to continue.

Dr. Ann Cavoukian: Thank you.

Mr. Michael Prue: Really, we're trying to be open, especially at the point where the birth parent or parents die. At that point, the records are supposed to be unsealed. I'm thinking about the hundreds or maybe thousands of people whose parent or parents may die in another jurisdiction and for the help of the Ontario government to determine that. That's what I'm trying to do.

Dr. Ann Cavoukian: Mr. Prue, I'm going to be really honest with you. I would like to turn my mind to that question because I'm not just going to agree with you and I'm not going to disagree with you either, because I truly have not weighed how one would do that. There is possibly a privacy-protective way of doing it and I would like to have an opportunity to consider how that would be conducted in a very fair and balanced way to all parties. I'm not ruling it out. I would consider finding an instrument, looking for a way to do that—a procedure or a process—but I'm not going to just agree right now because I haven't turned my mind to it.

Mr. Michael Prue: Well, of course, but you do agree to turn your mind to it?

Dr. Ann Cavoukian: I would consider it.

Mr. Michael Prue: All right. So if I were to write you a letter after this committee has deliberated, you would turn your mind to it?

Dr. Ann Cavoukian: I would turn my mind to it.

Mr. Michael Prue: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Now we have Mr. Ramal, Mr. Sterling, Mrs. Sandals. If they all would like to speak, I will maintain that order or you may cede the floor. Mr. Ramal.

Mr. Khalil Ramal: Thank you, Mr. Chair. I want to say we are against this motion for two different reasons. First, because this motion would contradict the statute of the bill, in which the bill asks for expiration of the disclosure veto when a death occurs. Otherwise, the disclosure veto would be available to either side. Therefore, I think it conflicts with the statute of the bill.

Secondly, as the privacy commissioner mentioned, it would violate the privacy of the people who put the disclosure veto in place. As she mentioned, maybe by mistake, when there is expiration of that disclosure veto, the Registrar General sends a letter to that person. It might be that the person is not at home at that time and then somebody opens the letter and then they will ask questions and violate the privacy, which is the intent of the bill.

That's why, for both of those reasons, we will be against this motion.

Mr. Norman W. Sterling: All I'm going to say is, having read the decision several times, it's very clear to me that the judge was unequivocal about the right of the individual to the veto. My concern is that this bill has already been mucked up once. The government didn't listen to what I consider was good advice at the time. I'm just concerned about the constitutionality of this and whether or not this would infringe the charter. I just think, in fairness to the people who have been waiting for this bill for so long, to have anything that hedges on this is probably unwise.

Mrs. Liz Sandals: Actually somewhat similar comments. Thank you to Ms. Cavoukian for her remarks. It seems to me that if you're going to have renewal notices on disclosures, you run the risk that the disclosure notice, in and of itself, will get into the wrong hands and create questions from people and therefore you destroy privacy.

It seems to me that in this pursuit of "Are you still alive?" the "Are you still alive?" letter could have a similar effect as the "Do you want to renew the disclosure veto?" letter and runs into somewhat similar problems in terms of protection of privacy, which we're now trying to bring the bill in line with. Listening to the two debates, those are just some observations.

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

If there's no further consideration on NDP motion 8, we'll now proceed to its consideration.

Those in favour of NDP motion 8? Those opposed? I declare the motion lost.

I will now ask for consideration of section 8. Shall section 8 carry? Those in favour, if any? Those opposed? I declare section 8 carried.

I will now proceed to consider the new section 8.1, the enabling section, and begin with PC motion 9, and subsequently PC motions 3 and 7, which, as you will recall, were deferred from section 4.

PC motion 9: Mr. Sterling.

Mr. Norman W. Sterling: This is going to be a long motion. Just before I read this motion, I'd really like to thank legislative counsel for acting so quickly in putting this together. Thanks very much. I phoned legislative counsel at 5 o'clock yesterday afternoon and she has been able to put this together. You've done great work.

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

"8.1 The act is amended by adding the following sections:

"'Prohibition against disclosure where adopted person a victim of abuse

"'Application

"'48.5.1(1) This section applies to an adopted person and to the birth parents of an adopted person only if the registered adoption order relating to the adopted person was made on or after September 1, 2008.

"'Definitions

"'(2) In this section,

"'"Child and Family Services Review Board" means the Child and Family Services Review Board continued under part IX of the Child and Family Services Act;

"'"children's aid society" means a society as defined in subsection 3(1) of the Child and Family Services Act;

"'"designated custodian" means a person designated under subsection 162.1(1) of the Child and Family Services Act to act as a custodian of information that relates to adoptions.

"'Request by Registrar General

"'(3) Upon receiving an application under subsection 48.2(1) from a birth parent of an adopted person, the Registrar General shall ask a designated custodian to notify him or her whether, by virtue of this section, the Registrar General is prohibited from giving the information described in subsection 48.2(1) to the birth parent.

"'Exception

"'(4) Subsection (3) does not apply if a notice of waiver has been registered by the adopted person under subsection 48.5.2(1) and is in effect.

"'Determination re method of adoption

"'(5) The designated custodian shall determine whether the adopted person was placed for adoption by a children's aid society.

"'Request for determination by local director

"'(6) If the adopted person was placed for adoption by a children's aid society, the designated custodian shall ask the local director of the society to make a determination under subsection (8) and to give written notice of the determination to the designated custodian.

"'Notice to Registrar General

"'(7) If the adopted person was not placed for adoption by a children's aid society, the designated custodian shall give written notice to the Registrar General that the Registrar General is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"'Determination by local director

"'(8) Upon the request of the designated custodian, the local director shall determine whether, in his or her opinion, based upon information in the files of the children's aid society, the adopted person was a victim of abuse by the birth parent.

"'Same

"'(9) The determination must be made in accordance with the regulations.

"'Notice to Registrar General, no abuse

"(10) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was not a victim of abuse by the birth parent, the designated custodian shall give written notice to the Registrar General that the Registrar General is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

1650

"Same, abuse

"(11) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the designated custodian shall give written notice to the Registrar General that the Registrar General is prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Application for reconsideration

"(12) The birth parent may apply to the Child and Family Services Review Board in accordance with the regulations for reconsideration of the determination made by the local director.

"Reconsideration

"(13) The board may substitute its judgment for that of the local director and may affirm the determination made by the local director or rescind it.

"Same

"(14) The board shall ensure that the local director has an opportunity to be heard.

"Procedural matters, etc.

"(15) The Statutory Powers Procedure Act does not apply with respect to the application, and the board shall decide the application in the absence of the public.

"Notice to Registrar General

"(16) If the board rescinds the determination made by the local director, the board shall notify the designated custodian that, in the opinion of the board, the adopted person was not a victim of abuse by the birth parent, and the designated custodian shall give written notice to the Registrar General that the previous notice to the Registrar General is rescinded.

"Finality of order, etc.

"(17) An order or decision of the board under this section is not subject to appeal or review by any court.

"Confidentiality of board records

"(18) The board file respecting an application shall be sealed and is not open for inspection by any person.

"Information for birth parent, adopted person

"(19) If the local director determines that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the local director shall, upon request, give the birth parent or the adopted person the information that the local director considered in making the determination, with the exception of information about persons other than the birth parent or the adopted person, as the case may be.

"Administration

"(20) Subsections 2(2) to (4) do not apply to notices given to the Registrar General under this section.

"Notice of waiver by adopted person

"48.5.2(1) Upon application, an adopted person who is at least 18 years old may register a notice that he or she waives the protection of any prohibition under section 48.5.1 against giving the information described in subsection 48.2(1) to his or her birth parent.

"Same

"(2) A notice described in subsection (1) shall not be registered until the applicant produces evidence satisfactory to the Registrar General of the applicant's age.

"When notice is in effect

"(3) A notice is registered and in effect when the Registrar General has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the Registrar General has matched it with the registered adoption order.

"Withdrawal of notice

"(4) Upon application, the adopted person may withdraw the notice.

"When withdrawal takes effect

"(5) If a notice is withdrawn, the notice ceases to be in effect when the Registrar General has matched the application for withdrawal with the notice itself.

"Administration

(6) Subsections 2(2) to (4) do not apply to notices registered under this section."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sterling. Any questions or comments?

Mr. Norman W. Sterling: Perhaps I can explain this. Basically, this is what was in Bill 183, which was the previous adoption bill that was introduced by this government. These sections, the first of which sets up the process, were put in place to try to help—if you were adopted on August 31, you're going to have an automatic right to a veto; if you were adopted on September 1, you don't have any right to veto. That's basically the rights we're creating under this legislation. My understanding is that this process, this idea of protecting children who are severely abused by their natural parent or parents would—and, as we know, the children's aid society would like this same section included in this act—create a very limited right to a limited number of adoptees who find themselves in a peculiar situation.

Here on September 1, we are creating rights for everybody in our society to get all of the records going forward. Therefore, we are creating a right for an abusive parent to get, at the age of 19, the rights to find out the adoptive name of their child, who was taken away from them by the Children's Aid Society because of a serious problem of neglect, physical abuse, sexual abuse and all those terrible things that we don't like to think about but do happen, unfortunately, in our society.

This bill creates, on the one hand, a right for an abusive parent to find out the adoptive name of this particular child when he or she reaches 19. Often there's serious violence involved with these cases, as told to us in the brief of the Children's Aid Society. When you create rights, in my view, you create obligations and you create problems with regard to other people in society. When I'm weighing the right that we are giving to an abusive parent to find out the adoptive name of a child whom they treated with violence—and this would only happen in very, very severe cases—who's more important in this particular game? Not game; I mean in this serious issue. I believe that you have got to err on the side of the child, if there's any erring.

My section here that I introduced allows—it's only a one-way stop. It doesn't stop the child from finding out who the parents were, if that's what the child wants. The child is the victim. The perpetrator is the one we're giving the rights to. Who knows what these perpetrators might do in terms of these children that were taken away from them? They're not very nice people. A lot of them would have been convicted of criminal offences. I don't understand why we don't allow this kind of protection to a very, very few number of people. In essence, what the government is saying is that they are favouring the abuser rather than the victim. That's the bottom line of what's happening here, by pulling this section out of Bill 183 and not putting it into Bill 12. We had this debate on Bill 12 and it was put in the bill because this came to light. To say that a 19-year-old young woman is an adult and she can do and make her own decisions and all that—I'll tell you, these people who we're talking about are nasty, nasty individuals. I don't believe that they should be given the same rights as other natural parents do have. I just think that in this case we have to err on the side of the children who have been abused.

So that's basically the thrust of this motion: setting up the process. You'll notice there's an appeal mechanism, that at the age of 19, if the abusive parents want to question the decision that was originally made, they can go to the review board. They can have a hearing. They can go through it all. I just can't understand the government pulling this protection for this very, very small number of individuals who are adopted.

1700

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

Mr. Khalil Ramal: I'm going to vote against this motion for many different reasons. First, we're not talking about children, we're talking about adults. As you know, the children would be protected. The adopted adult cannot ask for information until he or she reaches the age of 18, and the birth parents cannot ask for information until that person reaches the age of 19. I think you asked this question of the minister this afternoon in question period and I'm going to give you the same answer: I think we'll treat the adults as adults. We don't treat them differently than that, because they have responsibilities. They can vote, they can drive, they can then make their own decisions. Therefore, they should be eligible to decide who they can contact or not contact, because I think the age of eligibility in Ontario gives them the right to decide and determine if they want to contact their birth parents or not.

I believe there is a penalty in place if they decide not to be contacted by their birth parents due to many different circumstances. There's a penalty in place. It would be $50,000 for individuals and almost $250,000 for a corporation. All these mechanisms are in place. This, if we accept your motion, will contradict the whole stature of the bill, because the bill asks for openness and disclosure of information when there's information that's applicable and allowed according to the law and according to the bill.

I think when we start to make exceptions to certain brackets, it would violate the whole essence and intent of the bill. Therefore, when the person becomes an adult, this bill will come into effect and the adult will have a right to ask for a no-contact notice. And there's a penalty in place to protect that person, whether they are contacted directly or indirectly, in violation of the whole law.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal. Ms. Jones, then Mr. Prue, then Mr. Sterling.

Ms. Sylvia Jones: Mr. Sterling's motion still allows the birth child to get the contact information if they so choose. As is pointed out in this amendment, it is a one-

way block. What it stops or prevents is an individual who is already abused—passing on that information to allow that contact to begin again at age 19. I'm disappointed to hear that you're going to vote against it because I think it is protection for the individual who's already had to deal with enough in their life.

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

Mr. Michael Prue: I have a statement, but also some questions. It appears to me from reading this—and we've only had the copy since today—that the parent may apply for a request of determination to the local director and then has the right of appeal to the Child and Family Services Review Board. But the determination by that board is final, it is not appealable, and it does not appear to me anywhere in the body here that the board has jurisdiction more than once to hear it. I am mindful that some parents, a few years after the event—and not all children are adopted when they are babies; some of them are 12 or 13 years old when the abuse takes place, so it would be fairly fresh. But I'm worried that 30, 40 or 50 years may go by and a person could be completely rehabilitated. If they've blown their one chance, I'm not sure whether they'd have a second option, because my reading of this says that the decision is final and it doesn't appear that another application can be made. If it can, that would assuage some of my fears. Perhaps before I speak further, the mover can explain to me, is this a one-time shot? If you lose before the review board, that's it forever, or can a person make a subsequent one, even if there's a time frame of 10 years later? Even somebody in jail, going before the parole board, gets an opportunity every couple of years to give it their shot. Would a person have another opportunity?

Mr. Norman W. Sterling: I want to answer the question. If it isn't in the amendment, I have no problem with giving a reconsideration every so often. We've heard one of the Liberal members say that they're going to vote it down, so I don't want to put legislative counsel to work with regard to doing it. But I understand your concern and I have no problem allowing for application every so often in terms of doing it. Does it allow for more than one hearing? Perhaps legislative counsel can help me on that.

Ms. Sibylle Filion: I think that the provision doesn't specifically allow for it. If you wanted to do that, the best approach would be to write it in specifically. Right now, it looks like it's a one-shot deal.

Mr. Norman W. Sterling: I would amend the motion to allow that to be taken into consideration.

Mr. Michael Prue: Given that explanation, that would certainly make me feel more comfortable. I do understand why this motion is being brought forward. Having been both on the Children's Aid Society of Metropolitan Toronto and on the child abuse committee of the city of Toronto, I'm fully aware of some of the horrendous things that happen to children. I'm also aware that children, notwithstanding that, may want to be reunited with their parents at some subsequent date, and this would allow for that.

I'm also aware—and I have seen evidence of this—that people who have been abusers, through counselling, advice, psychiatrists, psychologists, jail, many factors, have rehabilitated themselves to the point that they're no longer a danger to themselves or others, particularly their children. I would hate to stand in the way of that reunification if a person subsequently, through help, meets the norms and can and should be reunited with their birth children.

Given the explanation that Mr. Sterling has given, and if there was an opportunity to reapply, even if it was only every five years, I would support the motion. But I would not support it if it was a one-shot deal because I think that's too final.

Mr. Norman W. Sterling: Perhaps legal counsel could convey what you conveyed to me a few moments ago, that it was her opinion that under this particular amendment, the regulations could include that opportunity to appeal every so often.

Ms. Sibylle Filion: I'm looking at subsection (12) in particular, which is the provision that deals with the reconsideration, and it says, "The birth parent may apply to the CFSRB in accordance with the regulations for reconsideration of the determination." So your regs could say every five years or every 10 years. You could allow for that in regulation.

Mr. Norman W. Sterling: Thank you.

The Chair (Mr. Shafiq Qaadri): Just to be clear, to bring some closure to this particular aspect, Mr. Prue, the committee needs to know, are you submitting a written amendment to Mr. Sterling's amendment?

Mr. Michael Prue: Mr. Sterling offered to amend his own motion, which I was going to accept, but if it's required that someone else do it, I would be prepared to do it.

Mr. Norman W. Sterling: I think what legislative counsel is telling me is that it's not necessary to do that.

The Chair (Mr. Shafiq Qaadri): We just need to be clear procedurally on that. That's fine.

Mr. Norman W. Sterling: If I could respond to Mr. Ramal, I don't understand you guys. Why are you taking the position that a serious abuser, a criminal, who beats up their kids, who sexually assaults them, sometimes rapes them, and you're not providing that young girl when she reaches 19 the ability to keep those parents away? You're saying "no contact." Well, here's what children's aid societies say:

"While there is no quantitative evidence which speaks to the success of no-contact notice provisions, there is anecdotal evidence that breaches of no-contact notices are more likely to occur in cases where an adoption was not voluntary"—and these aren't voluntary adoptions; the kids are taken away—"and is a result of a child protection apprehension. There is concern that breaches in no-contact notices may be under-reported, giving the government a false sense of safety. For an adoptee where the biological parent did not voluntarily relinquish them for

adoption, a no-contact notice, regardless of penalty, is not sufficient nor prudent, when this biological parent has a demonstrated history of severe violence against the adoptee."

1710

I don't understand. Where are your hearts? This is not kids' stuff. This is real protection for a young woman who turns 19, who's been raped by her natural father, and you want to give her adoptive name to that—you're creating the right, in this legislation, to give that rapist the adoptive name of his daughter whom he's violently assaulted. I don't understand you guys. If you can't think for yourself, then—I'm sorry, I'm upset, but I'll tell you, if you don't pass this, I'm going to make you wear it. I'll make you wear it.

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

Mr. Khalil Ramal: I still haven't changed my mind about your explanation, because we strongly believe in individual rights, and this bill, or another bill, shouldn't take the rights away from any individual in the province of Ontario. I believe that we're talking about adults; we're not talking about kids here. If you give the right to the adult to vote, to make a very important decision concerning the province of Ontario, I guess they have a right to make a decision about their own life. I think that's what we're talking about here; we're talking about adults—

Mr. Norman W. Sterling: The 19-year-old doesn't get a choice. They can't keep their name—

Mr. Khalil Ramal: Sir, you're talking about adults. When a person becomes an adult, that adult has a right, according to the law in the province of Ontario, in Canada, to express herself or himself the way they want to, and they have a right to know about their personal identity. You have no right—you and I, or anyone in the province of Ontario—to prohibit them from learning their own information about their own history. Therefore, we are against it.

Mr. Norman W. Sterling: We're not blocking her; we're blocking the rapist from getting the information. She can find out who the natural parents are; we're saying that's okay. It's a one-way block, and the block is against the rapist.

Mr. Khalil Ramal: Sir, we have a—

Mr. Norman W. Sterling: You're for the rapist and against the victim. That's what you are. That's the opinion you're stating here, and I'm going to make you eat it.

Mr. Khalil Ramal: We have a section, sir, in this bill—and you probably didn't read it very well—in which a penalty may apply to a person who violates the no-contact notice. Either side can file for that notice. We cannot create a section and exempt certain people. We have to have a bill, and the bill can apply to all people, adults, whether they live in London or Toronto, whether they have been raped or not. When you are adult, you are adult; you can make your own decisions. Therefore, this bill will come into effect when you become an adult, and when you're not an adult, you'll be protected according to the law of this province.

Mr. Norman W. Sterling: You'll let the rapist violate her again? You're saying, "Give him the name so that he can go and find her, and the predator can get her again."

Mr. Khalil Ramal: Sir, you're not getting the point, I guess. We said we have a section in place to protect the person.

Mr. Norman W. Sterling: Oh, yeah. These guys really care about those things? Give me a break. These are thugs.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal. Thank you, Mr. Sterling. Dr. Jaczek, if you have some comments.

Ms. Helena Jaczek: Yes, I just have a point of clarification. Listening to what we've heard over the last little while, why was there not the desire to allow the adopted child, at the age of 18, between the ages of 18 and 19, the opportunity to provide a—I know there's a no-contact clause, but why not a disclosure veto?

Mr. Khalil Ramal: There's no disclosure veto.

Ms. Helena Jaczek: But why not?

Mr. Khalil Ramal: There's no disclosure veto. The disclosure veto will not be in effect after September 2008. Now, we've created another one, called the no-contact notice, in which you are allowed, when you turn 18, as an adopted adult, to file not to be contacted. If any person violates this contract or this action, they'll be subject to a penalty, which is $50,000. If you're a corporation, you will be subject to $250,000. So there are all these protection mechanisms in place.

When we talk about the person, we're not talking about a child; we're talking about an adult. Adults have a right to express themselves when they turn 18 years old. They can vote and they can make a decision about themselves, and they have a right, according to the law of Ontario and a lot of human rights issues, to express themselves the way they want to. So we cannot have an exemption from certain specifications in this bill or certain sections. Therefore, this bill comes into effect when the person becomes an adult.

Mr. Norman W. Sterling: Why did you have it in 183?

Mr. Khalil Ramal: We're talking about Bill 12 right now, sir.

Interjection.

Mr. Khalil Ramal: We're talking about Bill 12.

Interjection.

Mr. Khalil Ramal: We're discussing Bill 12.

The Chair (Mr. Shafiq Qaadri): If there's no—dare I ask—further consideration—

Interjection.

Mr. Khalil Ramal: The question was answered.

The Chair (Mr. Shafiq Qaadri): The floor is open.

Ms. Helena Jaczek: Is it possible to hear a little bit more about the prospective nature of the bill and why September 1, 2008, was chosen—just a little bit more background?

Ms. Brenda Lewis: In the policy rationale in developing the new legislation, we were trying to promote openness in responding to the cry from the public, the adoptees within the adoption community. They wanted open records.

When we were looking at how to go forward with these cases, it was clearly identified in discussions with the Ministry of Children and Youth Services that abuse as a child does not predetermine abuse as an adult. So we were looking at how best to handle this.

Through our discussions, it was identified that abuse is no longer kept as a secret through the adoption process anymore. It's often openly talked about with the adoptive parents, and children's aid societies are moving towards a system that provides a greater openness, working with both the birth parents and the adoptive parents. They are promoting more contact with the original birth parents regardless of whether or not there was abuse.

When weighing the openness, then we looked at no-contact notices as a measure that we put in place under the previous legislation that we recommended be left with Bill 12, going forward. That puts a protectionary measure in place. If that individual has accessed their non-identifying information and determined that there's abuse, then they have a choice to register a no-contact notice on their file. In other provinces, the sanctions that have applied have proven to be beneficial and work.

In the essence and the spirit of moving forward on an open-record basis, the decision was made that no-contact notices would be sufficient.

The Chair (Mr. Shafiq Qaadri): Mr. Sterling?

Mr. Norman W. Sterling: I think you should read the judgment with regard to what Judge Belobaba said with regard to the no-contact provisions of the past bill. He laughed at them in terms of what they would mean and what would happen. Basically, the no-contact provisions go against the individual, but it doesn't prevent the brother or another individual from contact. They're very, very limited in their scope, so that if an abusive, violent natural parent wanted to get at his kids, he can get at them through somebody else, without any fine going against him in terms of the no-contact.

The other part is that these people probably have no fear of violence. Some of them have probably been in jail before. They're another side of society. Some of them, as Mr. Prue said, will come around etc. But there's a process in place to deal with that.

The society said in their brief to us, "Children who survive rape as infants, attempted murder, torture, or are starved and exposed to other forms of severe neglect should be afforded the opportunity to rebuild their lives in loving, adoptive homes. Adoptees should not have to live in fear that the perpetrators of those acts of violence have a legal entitlement"—a legal entitlement. That's what we're creating: a legal entitlement for these violent people to learn their names at age 19 and then to track them down, as some of them will no doubt do at some stage of our history.

I guess the only good part about this particular section is that probably the next government will have another crack at it, and that it will not affect that many people in the next three or four years. But notwithstanding that, I just think it's despicable that you hold up individual rights for these people and forget about what happened to these kids. "When they're 19, yeah, they're okay, they can take care of themselves. Let these despicable people who've brought severe damage to these people's lives, both physically, perhaps, and psychologically—let 'em at 'em again. Let 'em know where they are."

The Chair (Mr. Shafiq Qaadri): The floor is open, if there are any further questions, comments or issues.

Seeing none, I'll now invite consideration of PC motion 9.

Mr. Norman W. Sterling: Recorded vote.

Ayes

Jones, Prue, Sterling.

Nays

Dhillon, Jaczek, Ramal, Sandals.

The Chair (Mr. Shafiq Qaadri): I declare PC motion 9 defeated.

We now have PC motion 3 and PC motion 7. You're welcome to enter them into the record, Mr. Sterling, although I do understand they are—

Mr. Norman W. Sterling: They're not relevant. They're out of order now.

The Chair (Mr. Shafiq Qaadri): We'll now go back to consideration of section 4, as amended.

Those in favour of section 4, as amended?

Mr. Norman W. Sterling: I want a recorded vote.

Ayes

Dhillon, Jaczek, Ramal, Sandals.

Nays

Jones, Prue, Sterling.

The Chair (Mr. Shafiq Qaadri): I declare section 4, as amended, carried.

We'll now proceed to consideration of section 9. PC motion 10.

Mr. Norman W. Sterling: I don't think it's relevant either.

The Chair (Mr. Shafiq Qaadri): Shall section 9 carry? Carried.

Shall section 10 carry? Carried.

We'll now consider section 11. PC motion 11.

Mr. Norman W. Sterling: It's not relevant.

The Chair (Mr. Shafiq Qaadri): Shall section 11 carry? Carried.

Section 12: PC motion 13.

Mr. Norman W. Sterling: It's not relevant.

The Chair (Mr. Shafiq Qaadri): Shall section 12 carry? Carried.

Having not received, to date, any amendments for, inclusive, sections 13, 14, 15 and 16, we'll put them to a block vote.

Shall those sections, so named, carry? Carried.

Finally, shall the title of the bill carry? Carried.

Shall Bill 12, as amended, carry? Carried.

Shall I report the bill to the House? Carried.

If there are no more questions or considerations, then I adjourn this committee.

The committee adjourned at 1723.

CONTENTS

Tuesday 22 April 2008

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

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Mr. Khalil Ramal (London–Fanshawe L)
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Ms. Sylvia Jones (Dufferin–Caledon PC)
Mr. Michael Prue (Beaches–East York ND)
Mrs. Liz Sandals (Guelph L)
Mr. Norman W. Sterling (Carleton–Mississippi Mills PC)

Also taking part / Autres participants et participantes
Mr. Peter Rusk, counsel, legal services,
Ministry of Community and Social Services
Ms. Brenda Lewis, manager, community services,
Ministry of Community and Social Services
Mr. Jacob Bakan, counsel,
Ministry of Government and Consumer Services
Dr. Ann Cavoukian,
Information and Privacy Commissioner

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Sibylle Filion, legislative counsel