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Jeudi 28 juin 2001

Standing committee on the Legislative Assembly

Ombudsman's report

Comité permanent de l'Assemblée législative

Rapport de l'ombudsman

Chair: Margaret Marland
Clerk: Donna Bryce

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Thursday 28 June 2001

Jeudi 28 juin 2001

The committee met at 1623 in committee room 1.

OMBUDSMAN'S REPORT

The Chair (Mrs Margaret Marland): Good afternoon. We will call to order the standing committee on the Legislative Assembly for today, Thursday, June 28. We welcome back to the committee Mr Clare Lewis, the Ombudsman, and also MPP Bart Maves, who is representing the Ministry of Health and Long-Term Care.

We obviously have an hour before the next bell, and I think the most logical way to proceed, if the committee members agree, is that we divide the time between half an hour for Mr Lewis and half an hour for the ministry, and then it would be 10 minutes per caucus within each of those half-hours. Is that acceptable to the members? Thank you.

Mr Lewis, we welcome you. Come forward, please.

Ms Shelley Martel (Nickel Belt): My apologies, Madam Chair. If you do it that way we won't have enough time to complete the report, so it's going to have to be less time. We had agreed that we would split this in half, with time being left to actually complete the report today.

The Chair: Your point is well taken. Do we have to move in camera to discuss the report at the end?

Clerk Pro Tem (Mr Douglas Arnott): That would normally be the committee's practice.

The Chair: Mr Clerk, can you tell me, do we allow 20 minutes at the end to discuss the report? So that leaves us 40 minutes and that, then, is 20 minutes for each presenting party, and we'll work out what 20 minutes each party divides into for each caucus.

Mr Lewis, you're welcome for 20 minutes.

Mr Clare Lewis: Thank you, Mrs Marland, members. I'd like to introduce Ms Laura Pettigrew, counsel at my office, to the committee.

With respect to your time limits today, I hope to be able to relieve you to some degree. I have almost nothing to say in response. Having heard the position of the ministry as expressed by Mr Maves and his colleagues, while well said, nothing was said that has not been put before me before in terms of the position of the ministry nor has anything been said that was not taken into account by me in arriving at my final conclusion. Therefore, I can simply say, with respect, that I've listened but I am not persuaded personally that my position is in error. So I really have nothing more to say, subject of course to any further questions by the members. That was the way I felt as we concluded last week, but of course it's not for me to say.

The Chair: Then I think we'll just go to the rotation. It's approximately seven minutes per caucus.

Ms Caroline Di Cocco (Sarnia-Lambton): Just one quick question. What concerns me the most is the lack of access that you had in your review. That concerned me a great deal. For some reason now it's considered a cabinet document, I understand. I would just like your observations on that matter.

Mr Lewis: As I told you, it's in my report, and as I mentioned last week, the Deputy Attorney General on February 26 certified that the document I was seeking was a document, as he put it, which constitutes a matter of deliberation before the executive council and accordingly is not required by Ombudsman Ontario to be produced. That was the certificate which barred my access to the document.

I heard with interest—I wasn't going to raise it on my own—the position taken by Mr Maves and Mr Finnerty, I believe, last week on that. I've checked it in Hansard since, and while I find it interesting, I am not persuaded that their view of the reason for the denial of the document is one which falls within section 20 of the Ombudsman Act.

I guess I have to say to you, I don't know whether what they said is the actual reason, because that was between the deputies, as I recall. But I don't believe, and it's just my opinion reading the statute and reading what they said, that they established that the release of the document indeed in some manner, as the section of the act says, might involve the disclosure of deliberations of the executive council. I take it that deliberations of the executive council have to do with the debate and the minutes of council, not the reports that go before them. However, having said that, I made my finding without the document. I was certainly denied access—and maybe it would have helped me, maybe it would have stopped me, I don't know—but I didn't need it to come forward and I don't think that my reasoning would be—I can't say that it wouldn't have been weakened, but if you don't mind my saying so, I doubt that it would have been strengthened if it had supported me.

Mrs Lyn McLeod (Thunder Bay-Atikokan): In your report, in addition to the specific finding around the

inequity on the travel for cancer patients, you also dealt with a number of other issues related to the northern health travel grant. Is it permissible, Madam Chair, to ask one question about one of the other travel grant issues addressed in the Ombudsman's report?

1630

The Chair: Yes.

Mrs McLeod: I'm asking it as a northern member, because I noted with a great deal of interest that one of the cases you dealt with was one in which an individual had been initially denied a northern health travel grant because they had been referred to a physician and the decision was made initially that they could have seen a physician at a closer point. I think your office was able to successfully resolve that issue. I ask this in genuine interest. We have a number of those cases in our office. Does that stand as precedent, and how would you advise that we deal with other cases in our office that are similar? Shall we send them to your office? Is there now a precedent, an experience that we can refer to, or does your resolution of that specific case change the policy in some way?

Mr Lewis: As you know, Mrs McLeod, you as a member of the Legislature have a right under the Ombudsman Act to refer a complaint to me, and you can certainly do that and I invite you to do so, as Ms Martel did and others have.

Do we have a little expertise in this area now? Maybe. I don't know. Might we be able to help a person who was denied, perhaps in error? Sure, we might be able to. We would have to examine the specific facts. Does that address what you're saying?

Mrs McLeod: Yes, it does. We do have a number of these where there has been a referral to a physician for reasons that there isn't an appropriate physician closer. So they're often referred, for example, from Thunder Bay to Toronto or to Hamilton, and the travel grant will be denied because potentially there was somebody who held a similar title in Sudbury, which actually isn't closer as travel goes in northern Ontario, but that's another story. I would take it, then, that on the basis of your having dealt with that case we could refer similar cases to you. We just don't want to flood your office.

Mr Lewis: You could, in any event, but I'd be happy to assist if we can. For instance, I noticed in the Hansard—in fact it was one that you set out in the House the other day—I have it in front of me, actually, so maybe I can get right to it.

Mrs McLeod: A parent travelling with an infant who couldn't go in the air ambulance.

Mr Lewis: Yes, that's it, the one where she couldn't go in the air ambulance and she went by commercial air. I only read that yesterday, so I instructed my staff to inquire if we have a complaint on this. I don't know whether we could help, but it's the sort of thing that looks like it might be an Ombudsman issue. You may feel that it's something that's worth referring.

Mrs McLeod: Absolutely.

Mr Lewis: There you go. I'm not here shopping, I'm really not. I'm sorry.

Mrs McLeod: I noted with particular interest that you had successfully resolved that case, because it's one of the kinds of cases—we become very frustrated in our offices. Another issue, and I'm not sure if you've dealt with it, is the issue of referral out of province. In northwestern Ontario that's often the closest referral, but they keep a list of physicians who are accredited, for some reason, and even though it's a fully accredited Manitoba physician, if it's not on the Ontario list, the travel grant is denied. I'm not sure if you've dealt with a case like that.

Mr Lewis: I don't know that issue, no. I would like to say, I'm not making any suggestion that there's—I'm not attacking the northern health travel grant, but, like any other program, there are from time to time problems in its administration. They arise, and we're here to assist if we can.

Ms Martel: Mr Lewis, I want just to begin by providing the committee with some information. Last week I said I was worried that nothing might be done before the re-referral program ended. So we checked with Cancer Care Ontario this morning and the staff there said that they actually have no idea when the re-referral program will end. It is true that they are not sending patients to the US any more, but there are patients being sent from all over Ontario. Last week, 21 went to Sunnybrook, but what is more interesting and more important to me is that five people were referred to Thunder Bay.

Mr Lewis: From the south?

Ms Martel: Two from Hamilton, two from London and one from Toronto were referred to Thunder Bay. This makes the need to do something even more important in my mind, especially because they could not tell us this morning when this program would end.

So I want to ask you a couple of questions with respect to your findings. The first is, you have made a finding of discrimination. Do you feel confident that this is a legitimate and valid finding?

Mr Lewis: Yes. I can be disagreed with, and I may even be argued with or proved wrong, but I certainly would not come before you with a finding that I did not have confidence in.

Ms Martel: Secondly, as a result of that finding, you made a recommendation to provide equal funding. Again, do you feel confident that that recommendation is an appropriate one to make to the government?

Mr Lewis: Yes.

Ms Martel: So if the government, in response, enhanced compensation for travel costs for northern cancer patients but still continued to provide funding for food, accommodation and taxis for re-referral cancer patients, would you say that would end the discrimination?

Mr Lewis: If they provided it to northern patients?

Ms Martel: No, if the government came forward and enhanced the travel for northern cancer patients—maybe went from 30 cents per kilometre to 35 cents, and that's all—but still continued to provide 100% of the costs for

the re-referral patients, would you say that the discrimination has ended?

Mr Lewis: No.

Ms Martel: OK. If the government introduced a completely new provincial program that provided travel costs for all patients who had to travel, but still continued to provide 100% of the costs for the re-referral patients, would you say that the discrimination has ended?

Mr Lewis: No.

Ms Martel: OK. So what does the government have to do to end this discrimination?

Mr Lewis: What I was urging or recommending that the government do is provide appropriate travel costs to northern residents who are travelling to their regional hospitals for prostate or breast cancer radiation treatment. For instance, in the Red Lake case, I would take that not to be 30.5 cents per kilometre one way, but rather the flight, which I think was $882, which would be similar to coming from Toronto, accommodation in the same fashion that Toronto or southern residents would receive, food costs and any attendant taxis or whatever that might tie in with airports or buses and so on. Does that answer your question?

Ms Martel: Oh, yes. Do you feel that's a legitimate request to make of the government based on your finding of discrimination?

Mr Lewis: Yes.

Ms Martel: You told us last week that you were very concerned at the delay you experienced in getting a response by the ministry on this case. Can you explain to the committee why you felt that way?

Mr Lewis: The response was a long time coming, in my view. A meeting with the deputy on the issue and Mr Zegarac was, given what I considered to be the urgency of the need and the timing I requested for a meeting, a long time coming. We're not talking huge times, because I've certainly got other cases I could point to, but this is an urgent matter in my view and I was concerned about whether this is a really finite program, as you know, and I wanted to be able to address it within the time that it was still operating.

I didn't see a whole lot more in the response at the end of May than what I got in December. That's not entirely true. There was more to do with comparisons to other provinces and so on—I've commented on my view of that—but it was certainly new and it had been added to the material and property. I was concerned that—well, I think I made it pretty clear last week.

1640

Ms Martel: Just let me return to the former line of questioning. Given that you have told us what the government should do and given that I have told the committee that CCO has no idea when the re-referral program will end, do you think that the government should undertake to pay 100% of the costs as soon as possible, because clearly it is not a temporary program?

Mr Lewis: Yes, if I could say, I was interested in Dr Nuttal's comments last week, looking at the transcripts, which I read as being that cancer is an increasing issue dealing with aging and the growing population, if I recall. That being the case, as she said, there may well not be decreases in the need, but rather increases in the foreseeable future. Yes, the root of my recommendation is that if a patient has to go today for their first treatment from Atikokan to Thunder Bay, they should be paid and they should be accommodated today in the same fashion as if they went from the south. So yes, I think it should be done soon.

Ms Martel: My last question: I know you didn't have a chance to deal with this, and you told the committee why last week, but should the government look at retroactive payments for those individuals who have been discriminated against, beginning in April 1999 when the re-referral program started?

Mr Lewis: Should the government feel that they were going to do it? Should they do it, is that what you're saying?

Ms Martel: Yes.

Mr Lewis: I think the way I phrased it last week, and I would repeat this week, is that if the government chose to do that as being proper, I would support their doing so. I think it would be consistent with what I've already said.

The Chair: Government members?

Mr Joseph N. Tascona (Barrie-Simcoe-Bradford): Thank you, Mr Ombudsman, for returning today.

Mr Lewis: It's a pleasure.

Mr Tascona: As I understand it, Ontario currently provides funding for two health-related travel assistance programs. First, the northern health travel grant, which was established in December 1985, and the Cancer Care Ontario radiation re-referral policy, which was established in April 1999. Do you agree with that understanding?

Mr Lewis: I do.

Mr Tascona: OK. As I understand it, and would you agree, these initiatives are separate programs with distinct purposes, objectives and criteria?

Mr Lewis: Yes.

Mr Tascona: In your opinion, was there any discrimination, as you define that term, before CCORRP was established?

Mr Lewis: Mr Stewart posited last week that perhaps the southerners could have considered that to be a discriminatory program, the northern health travel grant—

Mr Tascona: No, I'm asking your opinion. The question is, was there any discrimination—

Mr Lewis: I would say no. In fact, my position was last week, and it remains, that the activating issue was the creation of CCORRP.

Mr Tascona: So if CCORRP was discontinued, would there be a case for discrimination?

Mr Lewis: Not at the moment that I'm aware of. It's not my proposal, of course, Mr Tascona.

Mr Ted Arnott (Waterloo-Wellington): Mr Lewis, again, thank you very much for coming to deal with this for the second week in a row. We appreciate your time and the opinion that you put forward.

The thing I have a problem with is the definition of "discriminatory." To me, discriminatory means something where there's an intent behind it, or it's intended to be treating two different groups differently. As you said, I think, last week—if I recall correctly and can paraphrase—you would never accuse the government of deliberately—

Mr Lewis: I didn't say I would never do it, I said they didn't do it in this case.

Mr Arnott: You did indicate in your opinion that it wasn't intended to be discriminatory. It wasn't intended that way.

Mr Lewis: Right.

Mr Arnott: What is the legal definition of the word "discriminatory," or is there such a thing? That's my question.

Mr Lewis: Thank you for raising that issue. I think it's an important one. First of all, I have to say that I'm bound by the language of my statute, so I have to make my findings within one of the grounds that I'm entitled. It's not an error, it's not a mistake of law. What is it?

I felt that, given our view of what "improperly discriminatory" means as I described to you last week, this falls within it. In the evolution of discrimination law—granted that this isn't Ontario Human Rights Code and it's not Charter of Rights and Freedoms—acts can be discriminatory even if they are not intended to be discriminatory. What's intended is the act, not the effect necessarily.

That's the basis upon which I feel confident in making the statement I do. But it's also why I was at pains, I hope, to say on more than one occasion that it was clear that the government didn't set out to hurt anybody. They didn't set out to discriminate in the sense we're talking, but the effect is so, in my respectful view; and I believe it is perceived to be so by a very large number of residents of northern Ontario, particularly those who suffer breast and prostate cancer.

The Chair: Further questions from the government?

Mr R. Gary Stewart (Peterborough): I want to go back to what we were talking about the other day about discrimination against, possibly, the people in the south. I guess one of the things we have in the south is an absolutely phenomenal volunteer system. Certainly, the number of people who are assisting people by driving cancer patients back and forth to Kingston and back and forth to Toronto is absolutely wonderful, and I think that they should be complimented. It's something southern Ontario does well and very extensively.

But if I look at the elderly person who may live in Windsor and who may have to travel by train to Toronto to get treatment; she may be on a very, very fixed income, yet cannot apply for assistance, as I understand, within that. She can't because she's travelling within her area. Whereas, and I may be wrong, in northern Ontario they can do that. They don't get any assistance in southern Ontario up until the eight-week period.

Mr Lewis: Right.

Mr Stewart: In the northern part, I understand they get travel expenses—not total expenses, but some assistance.

Mr Lewis: That's true.

Mr Stewart: OK. Is that not a form of discrimination?

Mr Lewis: As I said to Mr Tascona—

Mr Stewart: I'm not trying to be argumentative; it's just that I have concerns about that.

Mr Lewis: I understand. No, I know you are, and maybe that's something that this long-time review will address, but it's certainly not the focus of my approach.

The northern health travel grant was created for very particular reasons that related to persons who live in the north and who, perhaps, don't have access to as many volunteers. They wouldn't have the same pool of volunteers to drive the huge distances that are involved. You know the trip from Windsor to Toronto is still only about 265 kilometres, but it's nothing to find it a 700-, 500- or 350-kilometre trip to a regional hospital of your own in the north. That's absolutely the norm.

In 1985 it was instituted, and governments since that time have treated the north as a special case. It's not such a special case in my view, given the relatively small amount that is provided, and I'm not making that as a criticism, but it's an absolute reality that it's 30.5 cents a kilometre one way. If Mr Zegarac goes up there and has to drive on government business, he gets at least that, if not more, both ways, to drive, as a civil servant, right? So it's not a lot of money. It's not the kind of difference that I think is going to trigger much animus in the south that they're being discriminated against because they didn't get it. That's all I can say to you.

The Chair: That's it for our three caucus presentations. Thank you very much for your attendance this afternoon, Mr Lewis.

Now I would call on the Ministry of Health and Long-Term Care. It's Mr Bart Maves MPP, parliamentary assistant to the Minster of Health and Long-Term Care; George Zegarac, executive director, integrated policy and planning; Kevin Finnerty, manager of planning and issues management, communications and information branch; and Sandy Nuttal, program consultant, health care program. Welcome.

1650

Mr Bart Maves (Niagara Falls): Thank you, Madam Chair and members of the committee. It's a pleasure for me to be back before the committee today to follow up our discussion on the northern health travel grant and Cancer Care Ontario's re-referral policy. Once again, I'd like to thank the Ombudsman and his staff for their work. As I said last week, we've taken this report under advisement and it will be, has been and is being considered in our current review of provincial travel assistance programs.

I would like to briefly review the two programs discussed in the Ombudsman's report because I want to leave time for questions, obviously. As I believe both Mr Lewis and I outlined last week, the travel grant program and CCORRP are two separate programs with distinct

purposes, objectives and criteria. The northern health travel grant is available only to people who live in northern Ontario. It defrays some of the travel costs for northern residents who must travel long distances to receive medically necessary insured specialist services within Ontario and Manitoba. It is a long-standing, permanent program established in December 1985.

The travel grant, as opposed to CCORRP, applies to any type of specialized insured health care. CCORRP, however, is a temporary program specifically designed to address radiation therapy waiting lists for breast and prostate cancer treatment. CCORRP pays travel, food and accommodation costs for all breast and prostate cancer patients in Ontario who are unable to receive timely radiation treatment at their home cancer care centre.

As I said last week, it is the timeliness of the treatment which essentially determines eligibility for CCORRP. If you have to wait for cancer treatment at your home centre in excess of eight weeks, you become eligible. The eight-week standard is a guideline established by Cancer Care Ontario to ensure that breast and prostate cancer patients get care within a medically acceptable time frame. Southern Ontario patients who can receive treatment within an eight-week period at their home centre are not eligible for any travel assistance. That support is reserved exclusively for residents of northern Ontario.

The NHTG, the northern health travel grant, and CCORRP are clearly two completely separate programs, and even though, as I stated last week, Ontario compares very well to other countries in terms of travel assistance, we believe we can do better. That's why the ministry and the minister have made a commitment to review both the northern health travel grant program and CCORRP. We decided to further broaden our review to include all travel assistance programs in Ontario. This enlarged project has developed a number of options that are currently under review.

As Minister Clement made very clear in the House this week, our ultimate goal is this: we want to create a province-wide program that addresses patients with a variety of medical needs across the entire province. We're committed to finding a broader province-wide travel assistance program that addresses the needs of northerners and southerners alike, now and in the future. Based on the comments we've heard from Mr Lewis and the members of the committee, I know we all share the same commitment. I will be happy to keep the Ombudsman and committee members informed of any new developments as we move forward with the current review.

I would also say, on a personal note, I will request directly to the minister that he direct the ministry to release the document in question as soon as it is no longer part of a cabinet submission, and that copies be sent both to this committee and to Mr Lewis.

The Chair: We'll move to Ms Martel. We're actually down to six minutes per caucus.

Ms Martel: I would say thanks to the parliamentary assistant. He should know that I first made a request for this document on September 13, 2000—this very same document—and now we are in the process of asking for it again as per advice we got from the privacy commissioner. We would be very happy to get it after such a long delay.

Secondly, I need to challenge again your use of the word "temporary." This program has gone on for 26 months now. I specifically checked with Cancer Care Ontario this morning to have an idea of when it will end, and the staff said they have absolutely no idea when they will stop re-referring patients. So there is nothing temporary about this program and there is no end in sight. That makes it imperative for this government to deal with the discrimination against northern patients.

The Ombudsman said very clearly he felt confident in his findings, he felt confident with respect to the recommendation he has made, and so I want to ask you, what does your government intend to do to provide equal funding for breast and prostate patients who have to seek radiation in northern Ontario? What specifically do you intend to do to equally fund them?

Mr Maves: Again, obviously our contention has been the same, that anyone who is facing receiving treatment outside of eight weeks, regardless of whether they're in northern or southern Ontario, can receive CCORRP, and only northern Ontario patients who have to travel to get cancer care treatment inside of eight weeks can get the northern health travel grant. We don't plan immediately to change those two programs, although as I have said, we are undertaking a review of travel programs province-wide. There's been a cabinet submission made by the minister, and that's why that document is part of that cabinet submission. Once it's gone through and met with approvals at cabinet, then the changes will obviously be made public.

Ms Martel: That has been underway since last May and we still don't have a new program before us. The reason I asked the question to the Ombudsman about whether or not having a travel grant program for all of the province would respond to his finding of discrimination was specifically to get his answer on record, which is that a province-wide travel grant program will not provide a remedy to the discrimination that he has already made clear to this committee. So I want to ask you again, is it your government's intention to equally fund northern cancer patients now in the face of the finding of discrimination that the Ombudsman has made?

Mr George Zegarac: I'm going to comment. The ministry is looking at a province-wide program. If there is a province-wide program, that assumes that the province-wide program deals with the re-referral issue. There wouldn't be two programs.

Ms Martel: Does the province-wide program include 100% of the costs of food and accommodation and taxi?

Mr Zegarac: I can't comment. The province-wide program is under review.

Ms Martel: So you can't give me a guarantee that the province-wide program is going to cover the same costs as are currently being covered by the re-referral program. Is that correct? You cannot guarantee me that.

Mr Zegarac: I can't comment, because I don't know what the decision of the government will be on what's included.

Mr Maves: In fairness, we can't talk about what may be in a cabinet submission at this point in time. We can't fully comment on that, obviously.

Ms Martel: We've been waiting for this change for almost a year now, and in the interim I think the Ombudsman has made a clear case of discrimination. I appreciate what you're trying to do, I say to the parliamentary assistant, to defend the government's view. But I asked the Ombudsman very specific questions today about his findings. I know about the two programs. I also know how many people are being discriminated against. That's why I was so pleased by his recommendation. The heart of the issue is this: does your government accept, take seriously, the finding he has made, which is one of discrimination? If you do, are you going to apply the remedy he has asked to be applied?

Mr Maves: As I said last week, we believe that like people in like situations are being treated in the same way. The key for CCORRP, again as we talked about last week, is a timeline issue, that anyone who's facing more than eight weeks to receive cancer treatment becomes eligible for CCORRP. That does not matter whether you're in southern Ontario or northern Ontario. If you're facing more than eight weeks, as was—it was radiation therapists, but I can't remember the name of the group. It's one of their key recommendations, and they used the eight-week period. Cancer Care Ontario wanted the timeline to be the key component of CCORRP, and it is.

Ms Martel: Except when you refer to like people in like situations, we have cancer patients in northern Ontario who have breast and prostate cancer. They go for radiation for breast and prostate cancer. And those same people with the same diseases see people in southern Ontario get 100% of their costs covered while they get a fraction of their travel costs covered. Same people, same disease, same treatment, but because they have to go to their nearest cancer centre instead of being re-referred, they get only a fraction of their costs covered. How can that possibly be fair?

Mr Maves: Because the only way that they only get the northern health travel grant when they have to travel for cancer treatment is if they're able to get it within an eight-week period. In southern Ontario people get nothing, not a nickel, not a dime, if they're going to get cancer care treatment inside of eight weeks.

1700

The Chair: Mr Maves, we have to move on. Mr Tascona?

Mr Tascona: We don't have any questions. We give our time to you, the Chair, to use as you wish.

Ms Di Cocco: I just have a quick question. Do you know how many people in northern Ontario have accessed CCORRP?

Mr Maves: I had that number in my binder last week, but I don't know the number—no one.

Ms Di Cocco: No one?

Mr Maves: Part of the reason for that is cancer services are much more readily available in northern Ontario. They're not at capacity, and part of the reason why southern Ontarians are sent to Thunder Bay is because they're not at capacity.

Ms Di Cocco: Have no cancer patients in northern Ontario been sent to Toronto or gone to Toronto?

Mr Maves: Not those facing an eight-week wait for services in northern Ontario.

Ms Di Cocco: It just seems remarkable to me. The fact that you say no one has accessed CCORRP indicates that's empirical evidence that obviously the people in northern Ontario who have not accessed CCORRP—are you suggesting, then, that although no one in northern Ontario has accessed CCORRP, the Ombudsman in his opinion is incorrect, in your view, in suggesting that there's discrimination?

Mr Maves: What it suggests to me is that it's empirical evidence that those northerners have better access to cancer services in their region, because they don't face an eight-week wait.

Ms Di Cocco: I'm sure we can get a list. I'm not from northern Ontario, but certainly, if we get a list of people who haven't been able to access cancer care in any timely fashion in northern Ontario and have gone to Toronto, they would know to access CCORRP. I can't believe that's the case. I have a difficult time believing that no one has gone from northern Ontario to another jurisdiction outside of their geographic area and accessed cancer care.

Mr Maves: George can comment on the actual process that they would go through to determine that.

Mr Zegarac: Cancer Care Ontario runs the program, so if there is somebody who is eligible, based on the clinical criteria that they've put forward, which is the eight-week waiting period—as Sandy said, it's their program. We're not aware of any northern patients who have qualified under the program and have received that assistance. But if they did qualify based on the criteria Cancer Care Ontario has, they'd be referred to the program and to the assistance.

Ms Di Cocco: I guess what alarms me is the fact that we have an Ombudsman who is, in my view, a third party who is analyzing the situation apples to apples. He's brought forward a finding, and I think an objective finding, because that's his role. I have to say that the current government has a very set agenda and that is to cut costs. That's a no-brainer. They've been doing this for the last six years. That's what drives their policies. We've seen that in evidence that's come forth currently. It's driven by dollars.

I'll just say it again. Are you suggesting, then, that the Ombudsman is wrong?

Mr Maves: What I would say is that CCORRP started in 1999, that no program ever existed like CCORRP before. We started that program and put the funding into it. The northern health travel grant was actually a program under the Liberal government and the NDP government and we funded it at the same level as the NDP government funded it. We haven't reduced that. Both of the previous governments saw fit to fund it at that level, and we see fit to fund it at the same level.

Finally, to the question of the temporary nature of the program, CCORRP would obviously end because it is a temporary program. We've always said it was a temporary program. It would end, and everyone has acknowledged and I think we said last week, once the human resources problem for cancer services is solved.

There's been a large recruitment drive underway by Cancer Care Ontario and there have been more spaces and more folks being educated to fill those spaces and solve that human resources problem. Once those people are disseminated in positions throughout the cancer services in Ontario, then there would no longer be an eight-week wait for anyone and the program would end.

Ms Di Cocco: But I guess I'm asking, is the Ombudsman right or is he wrong?

Mr Maves: We respectfully disagree in the sense that we believe that like people are being treated in a like fashion.

If I could, if there are 20 more seconds, in 1995-96 there was $8 million spent on the northern health travel grant program. In 2000-01 we spent $10.3 million on the northern health travel grant program, which is $2.2 million more than the NDP government spent.

The Chair: Mr Maves, we're out of the six-minute time allotments. Thank you for your appearance with the staff this afternoon. The committee will now move in camera to discuss the report, if visitors could comply with that request by members, please.

The committee continued in closed session from 1707 to 1728.

The Chair: All right, we are now moving—will someone move us out of in camera?

Ms Di Cocco: I move us out of in camera.

The Chair: OK, moved by Ms Di Cocco.

There is a motion on the floor that was voted on in camera. I will read that motion so it can be confirmed in open session. The motion is to uphold the report of the Ombudsman—I will identify the Ombudsman's report as an Investigation into the Ministry of Health and Long-Term Care's Funding for Breast and Prostate Cancer Patients who must travel for Radiation Treatment. The motion is to support that report, as I have identified it, and to support the recommendation of that report. So there is no misunderstanding, the recommendation of the report is that "The Ministry of Health and Long-Term Care should provide equal funding to breast and prostate cancer patients who must travel for radiation treatment." Again, that's the motion on the floor. All in favour of that motion?

Ms Martel: A recorded vote.

Mr Jerry J. Ouellette (Oshawa): We've already voted on that.

Mr Stewart: We've already voted on that. We can't have a recorded vote now.

Mr Ouellette: We made it very clear that what was intended was the reporting of the voting once we came out of camera. You have changed what we are doing now. Why did we go in camera in the first place?

The Chair: To discuss the report.

Mr Ouellette: And to make a decision that is to be reported afterwards.

The Chair: A motion passed in camera has to be recorded in open session.

Mr Ouellette: Reported.

Mr Stewart: But not re-voted on.

The Chair: Mr Clerk, does it have to be voted on again? I thought you said it did.

Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell): You cannot ask for a recorded vote in a closed session. That could take place only in an open meeting.

Interjection.

The Chair: Go ahead. Let's listen to the clerk for a minute.

Clerk Pro Tem: There are two uses of the word "recorded": recorded by the broadcast or recording system is one usage; recorded in the clerk's minutes of the meeting is a second usage. When the phrase "recorded vote" is used in the standing orders, it refers to the vote or division recorded by the clerk in the clerk's minutes. It is possible for there to be a recorded vote in a closed session meeting. It is not usual that the proceedings of a closed session are recorded in a clerk's minutes of the proceedings. However, if a committee directs that that be done, it can be done. Therefore, it would have been possible at the proper time to request a recorded vote in the closed session and for the committee to agree to direct the clerk to record that in the minutes of the proceedings. I could, for the committee, for the record, advise the committee of those voting in favour of and against the motion that was moved and defeated in closed session, if that would be suitable.

The Chair: Are you now saying, Mr Clerk, that it isn't necessary to confirm in open session a motion passed in camera?

Clerk Pro Tem: That's correct.

The Chair: I don't think that's what I heard in camera, so I don't think I'm the only person who is confused here.

Ms Di Cocco: If I could, just for one quick second: I believe it's important that I certainly understand the proceedings. I would request your indulgence, again, because it was my motion—I would like it recorded and stated, and a recorded vote on it.

The Chair: How do we have a record of that motion without Hansard?

Mr Tascona: Madam Chair, I think it's very clear what the rules are and what the clerk has indicated. What Ms Di Cocco wants to happen needs the consent of this committee. The purpose of going in camera is to consider

the report and decide whether or not to uphold the position of the Ombudsman. The next step is for the committee to present its recommendations to the Legislative Assembly in the form of a report. That's what we're dealing with here, the report we're going to present, not motions.

The Chair: Mr Clerk?

Clerk Pro Tem: As I suggested to the committee, if it is the committee's wish, I could advise the committee on the record, at your direction, of those voting in favour and against the motion that was defeated in closed session.

Ms Martel: Do I need to move that?

If I might, Madam Chair, in public accounts we deal in closed session an awful lot of the time for report writing, but we usually move into open session to record a vote. I assumed the same thing was going to happen in this committee. Otherwise I would have requested a recorded vote. So if the only way to actually have that occur is for me to move a motion that the clerk would now read into the record the results of that recorded vote, I would do that. If I had known this was going to be the case, I would have moved a recorded vote in the closed session too. But we don't normally do that in public accounts, so it would never occur to me to do it here. I didn't think there would be a difference between the two committees.

The Chair: There shouldn't be a difference between committees. I never recall recommendations dealt with off the record as standing motions that do not require reporting on the record, and that's how I have proceeded.

Mr Ouellette: Madam Chair, I find some differences in what took place in camera and what is taking place here. Ms Martel very specifically asked to be in full session for the ability to have a dissension listed at that time. If that was the case, then why would we move and be expected to move to a full vote in that time, which would have shown dissension at that time?

Ms Martel: I asked if I could write a dissenting report.

The Chair: She asked if she could write a dissenting report, and she was advised that she could by the clerk.

We are now in open session with a motion on the floor that I have just read. So I think I'm going to take the vote on the motion I've just read in open session, and then I will proceed at the direction of the members. Because right now—

Mr Tascona: That's not in order, Madam Chair, because if Ms Martel—

The Chair: Are you going to challenge the Chair?

Mr Tascona: The thing is, we just heard what the clerk said. For that to happen requires the committee's consent. If Ms Martel wants to put a motion out there to have happen what you're suggesting should happen automatically, we're quite prepared to hear her motion, we'll vote on it and we can move to the next step.

The Chair: There are two things. We have a motion on the floor now that's exactly the same as the motion we discussed in camera. That motion is on the floor. In addition to that motion, we have a member who may wish—I haven't heard this in open session—to file a dissenting opinion. If you want to deal with the motion and then deal with whether or not that member has a right to file a dissenting opinion, then let's deal with it separately.

Mr Tascona: That's not an issue. If she wants to request a dissenting opinion, she can make that request after the results of what we did in closed session come out.

The Chair: All right.

Mr Tascona: You're asking to do it in reverse. We had the vote in closed session and we had a result. All you're here to do is report what happened, not consider other motions. We've already had our vote.

The Chair: We can consider any motions in open session until the meeting is adjourned.

Mr Tascona: Madam Chair, the thing is, we are supposed to report to the Legislative Assembly on what our findings of the report are.

The Chair: That's right.

Mr Tascona: We've voted on that. I would have thought we were going to report on what the findings were in camera, not entertain other motions that had already been voted on in camera.

Ms Martel: If I might, Madam Chair, I thought what we were doing would be reporting on the findings; that is, who voted and in what way. If I had known that was not going to be the case in the open session, I would have moved for a recorded vote when we were in closed session. The only reason I would feel I have to move a motion now is that it seems that's the only way to have consideration of a recorded vote in open session so it's on the public record. It is not my understanding, if I might, Madam Chair, that there would not be an ability to have a recorded vote in the open session. That runs contrary to other committees I have sat on—contrary.

The Chair: The committee is in session right now. I would suggest that any motion is in order until the committee is adjourned. If you have difficulty with dealing with the same motion that was dealt with in camera, it would be very easy to change the wording of that motion, if you want to do that, to change the wording of the motion by one word and then it's not the same motion.

Mr Stewart: Madam Chair, has it been recorded that a vote was taken in camera and that the result was that it didn't pass, period? If somebody now wants to make another motion on something else, that's fine, but we have already dealt with it. I would think it should be recorded now by just verbally recording what we did. If somebody wanted to have a recorded vote, they should have asked for it. I'm sorry. I would think that what we voted in camera should be recorded, and then you get on with where you're going from there.

The Chair: Mr Clerk, I want you to answer the question of Mr Stewart. Mr Stewart has asked, was the action of the committee in camera yet reported since we came back in open session?

Clerk Pro Tem: Members here have discussed in open session what occurred in the closed session. There

has been no recounting of the vote on the motion that was defeated in closed session.

The Chair: So, Mr Clerk, are you able to report what was dealt with in camera to the committee in open session?

Clerk Pro Tem: If that is your direction, Chair, yes.

The Chair: I'm asking you the question; I'm not directing you. I'm asking you the question. And if that's the case—

Clerk Pro Tem: The normal practice of the committee would be that the Chair would report to the committee and those assembled in the room the decision of the committee as arrived at in closed session.

The Chair: All right. I'll do that. Now that we are back in open session, I am reporting that in camera the following motion was placed and voted on. It was a motion by Ms Di Cocco that the committee uphold the report of the Ombudsman, identifying the Ombudsman report as Investigation into the Ministry of Health and Long-Term Care's Funding for Breast and Prostate Cancer Patients who must travel for Radiation Treatment, and support the recommendation of that report, which reads as follows: "The Ministry of Health and Long-Term Care should provide equal funding for breast and prostate cancer patients who must travel for radiation treatment."

That motion was voted on in camera and lost.

Mr Tascona: I have a motion, Madam Chair.

The Chair: Go ahead.

Mr Tascona: I move that the committee respectfully disagrees with the recommendation of the Ombudsman and finds that the northern health travel grant and the Cancer Care Ontario radiation re-referral policy are separate programs with distinct purposes, objectives and criteria.

The Chair: Any discussion on that motion?

Mr Ouellette: Madam Chair, I believe we are allowed a recess before an actual vote takes place, and I would request a recess.

The Chair: You're asking for the 20 minutes to get the member's privilege. Is that what it's called, Mr Clerk?

Clerk Pro Tem: Yes.

The Chair: All right. The committee stands adjourned for 20 minutes.

The committee adjourned at 1743.

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