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Lundi 5 novembre 2001

**Standing committee on
justice and social policy**

Student Protection Act, 2001

**Comité permanent de la
justice et des affaires sociales**

**Loi de 2001
sur la protection des élèves**

Chair: Toby Barrett
Clerk: Tom Prins

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY**

**COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES**

Monday 5 November 2001

Lundi 5 novembre 2001

The committee met at 1551 in room 151.

STUDENT PROTECTION ACT, 2001
LOI DE 2001
SUR LA PROTECTION DES ÉLÈVES

Consideration of Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students / Projet de loi 101, Loi visant à protéger les élèves contre les mauvais traitements d'ordre sexuel et à prévoir autrement leur protection.

The Chair (Mr Toby Barrett): Good afternoon, everyone, and welcome to this regular meeting of the standing committee on justice and social policy for November 5. The agenda for this afternoon: Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students.

There are two orders of business. We do have a delegation, and we would follow that presentation with clause-by-clause consideration of the bill.

CHILDREN'S AID SOCIETY OF ALGOMA

The Chair: I would now ask the Children's Aid Society of Algoma to come forward. Good afternoon, sir. We have 20 minutes for your presentation. You may want to leave time for any comments or questions from committee members. For the purposes of Hansard, we would ask for your name, please.

Mr Hugh Nicholson: I'm Hugh Nicholson, and I'm the executive director of the Children's Aid Society of Algoma.

The Chair: Please proceed.

Mr Nicholson: The Children's Aid Society of Algoma thanks the standing committee on justice and social policy for being given the opportunity to present a response to Bill 101. The prevention of institutional abuse is an important part of every children's aid society's legal mandate, and each year CASs investigate thousands of reports of child sexual abuse. I might add that investigations of teachers or staff employed by school boards is only a small proportion of that.

Most of these investigations are joint investigations with police forces such as the Ontario Provincial Police or Sault Ste Marie Police Service. The roles of the police and CAS, however, are quite distinct. Police forces investigate the possible commission of a crime, and

before charges can be laid they must be reasonably sure there's sufficient evidence to prove beyond a reasonable doubt that a criminal act has occurred. CASs not only investigate harm to children but also risk to children. CAS investigations therefore have a preventative focus in which they must determine, based on a balance of probabilities, whether or not there's the pattern of behaviour that would indicate risk of harm to children.

While CASs investigate harm to children or the risk of harm, they are also involved with children as caregivers long after the completion of the investigation to ensure the safety and well-being of these children. In some instances this may mean bringing children into the temporary or permanent care of the society.

Because of the role CASs play in the prevention, investigation and treatment of child sexual abuse, they have a solid understanding of the factors involved as well as possible solutions.

In addition, the Children's Aid Society of Algoma had the opportunity to explore possible legislative options to preventing child sexual abuse through their involvement with Bill 118, which was presented in the previous sitting of the Legislature. Bill 118 proposed changes to the Child and Family Services Act to prevent institutional abuse. That would also include abuse by employees under the school boards. Hopefully Algoma's experience will be useful in strengthening Bill 101.

The Children's Aid Society of Algoma also appreciates the intent of Bill 101 and the efforts it makes to track professional misconduct and prevent child abuse. While supporting this direction, the society believes, however, that Bill 101 has a number of weaknesses. In this presentation we'll outline some of those weaknesses.

Part I, "Amendment to the Education Act:" Part I of the legislation will not prevent the type of abuse reported by Justice Robins in his report Protecting Our Students. As we've seen in the DeLuca case and reports prepared by Goldie Shea for the Law Commission of Canada, the abuse usually goes on for years before there is enough evidence to support criminal charges and/or criminal convictions. Therefore, changing subsection 170(1) of the Education Act to ensure teachers "charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors, or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the teacher ... per-

forms no duties in the classroom and no duties involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be" will only protect a very small minority of children from being abused.

The wording proposed in Bill 101 implies that if charges are dropped or the person is acquitted there is no risk to children. Justice Robins highlights that in his report, and I'll refer to that section. On page 203 he's saying, "The member need not have been found guilty of a crime where the conduct is otherwise proven before the disciplinary committee." So it goes beyond the fact that when somebody isn't proven guilty of a crime it doesn't necessarily mean that children aren't at risk of being abused.

In many instances, children's aid societies are involved in the investigation of reports of sexual molestation or sexual exploitation of children years before criminal charges are laid. Unfortunately, there are no provisions in the Education Act or the Child and Family Services Act which allow children's aid societies to report their findings to school boards.

In addition, individuals charged with sexual abuse may plead to a lesser offence of a non-sexual nature. This creates a number of difficulties for school boards. For instance, if the courts are now saying that it was not sexual abuse, can the school board even report it to the College of Teachers? In some circumstances, the school board may not even be aware of the details that have led to the charges.

Since these investigations are jointly conducted with children's aid societies, and the role of the CAS is both enforcement and prevention, being informed of CAS findings would help resolve this problem. Inclusion of confirmed reports of child abuse by CAS in subsection 170(1) of the Education Act would significantly increase the education system's ability to prevent and end child abuse. This section would also include protection for CASs when making these reports, or should also include that.

Also, there's no mention in section 170 of other staff who are employed by the school board and may have contact with children and be perceived by children as people with authority over them. Justice Robins's report points this out on page 186. This includes maintenance staff, teachers' aides, bus drivers etc. We believe that consideration should be given to including them in this section.

Under part II, "Amendments to the Ontario College of Teachers Act," we believe the definition of sexual abuse is very limited and excludes many of the behaviours that are clearly forms of professional misconduct that place children at risk. If Bill 101 intends to protect children, then consideration should be given to expanding it to include grooming behaviours and the various forms of coercion that are recognized patterns of people who sexually exploit and molest children. What we're really saying here is that we're not talking about isolated situations or any sort of employee misconduct in any area; what we're looking for is a pattern of behaviour that

clearly indicates there is a problem, and that pattern of behaviour would also have to be based on solid evidence.

Under this, we feel that a better definition is the definition recommended by Justice Robins in his recommendation 7.2, where he defines "sexual misconduct" rather than "sexual abuse" and provides some detail on this that then covers some of the areas I've just discussed.

1600

Another section that we feel could be strengthened is the reporting requirements related to professional misconduct, part IX.1. Subsection 43.3(1) should not be limited to charges or offences under the Criminal Code. This section should also require employers to report any professional misconduct that is reported during the course of the child protection investigation. This would ensure that the Ontario College of Teachers had access to this information, and it would encourage school boards to give careful consideration to this information.

We believe there should also be a subsection that holds teachers accountable for reporting sexual misconduct. I think Dr Northan, the medical officer for Algoma, also recommended this in his presentation under Bill 118 in the Soo. We can see from Justice Robins's report that peer pressure, the status of the offender and fears about one's own personal liability are deterrents to reporting suspicions of child abuse. There is also the belief that the recent changes to section 72 of the Child and Family Services Act will ensure that suspicions are reported in the future. While duty to report, section 72 of the CFSA, has been strengthened, many teachers and principals do not understand this legislation, and the very short statute of limitations under the Provincial Offences Act makes it difficult to hold professionals accountable. An accountability section in the Ontario College of Teachers Act would be a more effective measure for ensuring teacher accountability.

Part III, "Amendment to the Teaching Profession Act:" the exemption under section 12 should include reports of all abuse by a teacher, not just sexual abuse. In the course of our investigations we have found section 12 to be a deterrent to reporting any form of abuse by teachers. The wording also says that a "member need not provide him or her with a copy of the report."

In some instances, providing a member with a copy of the report could hinder the investigation. While we want to protect the rights of teachers, the protection of students from abuse should be a higher priority. Therefore, this section should be reworded to allow police and children's aid workers to control the release of these reports when necessary.

In conclusion, this week the government of Canada is proposing their share of the financial settlement for cases involving the abuse of 800 or more native children in residential schools. Unfortunately, if the proposed wording in Bill 101 were in place then, we would still be facing the same settlements. If history is not to repeat itself, we need stronger measures than those proposed in Bill 101.

Just as these native families did years ago, we as parents entrust our children to the care of the educational

system during a very vulnerable and critical period in their development. As we do so, we worry about our children's progress and their adjustment to a system that has a significant impact on their future opportunities. If everything goes well, this can be a wonderful experience for children. They make friends, learn to respect people in authority and learn new skills that make them more confident and competent people. There are the rough spots, but that is also part of growing up and learning how to live in the broader community.

The events described by Justice Robins and by Goldie Shea have no place in our school system. Bill 101 is Ontario's chance to make this possible. If the recommendations outlined by the Children's Aid Society of Algoma, as well as the recommendations of other participants, such as the Ontario College of Teachers, are incorporated into Bill 101, we should be able to eliminate the threat of sexual abuse in schools. We therefore encourage the Legislature to take the time required to make the necessary changes.

The Chair: Thank you, Mr Nicholson. That would leave about two minutes for each party for any questions or comments. I'll begin with the Liberal Party.

Mr Gerard Kennedy (Parkdale-High Park): I just wanted to ask, was the children's aid society consulted by the government prior to their bringing forward Bill 101?

Mr Nicholson: No, there was no consultation with our CAS, at least. I'm not sure if there were consultations with the Ontario association, although I probably would have heard about that, given my interest in this.

Mr Kennedy: I want to be clear. You're telling us essentially that the legislation we have in front of us would not prevent much of the abuse that took place in the first instance. In other words, for the benefit of the people of Ontario, the abuse that took place that Justice Robins investigated and then expanded to province-wide recommendations would not be covered by the kind of legislative remedy the government has put forward today.

Mr Nicholson: In our opinion, you're correct that it wouldn't be covered. Some of the provisions under Bill 101 I think even create some confusion, which may increase the vulnerability of children.

Mr Kennedy: In a related matter, Justice Robins also made other specific recommendations. You refer to definition. He also talked about resources for prevention. He made, not a long list, but a very specific list of where that could be beneficial. They're not referred to in the act either. How important are those resources to preventing a recurrence of what happened with the DeLuca case?

Mr Nicholson: I think they're very important, and one of them is the education of teachers in the whole area of patterns of behaviour which would indicate risk to children. There's a lot of confusion, when we talk about that, around what that really means. Teachers are really worried about it, and administrators. Because they're not very knowledgeable of it, they really misinterpret, I think, some of the things we're saying here.

Mr Kennedy: As a child protection professional, can you think of any reason why children in private school settings should not be extended the same protection as those in public schools?

Mr Nicholson: No, I can't, and I think they should be. Any private or public schools should be included under this.

Mr Kennedy: So your summary advice is to wait and get it right.

Mr Nicholson: Yes. We're changing three pieces of legislation. That's a rare opportunity, and I think we really need to make sure we do it properly while we have the public interest in doing this.

The Chair: Thank you, Mr Kennedy. For the New Democratic Party, Mr Marchese.

Mr Rosario Marchese (Trinity-Spadina): Thank you, Mr Nicholson, for your submission. I found it very helpful, and I'm saddened a bit because it would have been perhaps useful to have had your submission last week—

Mr Nicholson: A little earlier.

Mr Marchese: —because you may know that the Liberals have some amendments. Of course, your amendments are not here. They may have been reflected by the government; I'm not quite sure. I was going to ask you the same question: were you—not you, but CASs generally speaking—consulted? When you say, “Unfortunately, there are no provisions in the Education Act or the Child and Family Services Act which allow children's aid societies to report their findings to school boards,” that would be a very easy inclusion to be making. Whatever you do, and the work you've done, that uncovers any particular problem as it relates to the school system, teaching and non-teaching, they would benefit from it, and we would all worry about your findings if they relate to a teacher or non-teaching staff as it relates to potential sexual abuse. Your findings would be of importance to us.

I'm not quite sure what the government members think or what Mr Dunlop, who is the parliamentary assistant, has to say about some of the questions you've raised. That one in particular is useful to me, and reporting requirements is interesting.

I thank you for your submission. I think it would have been helpful. I don't know whether Mr Dunlop is going to ask any questions or whether he's going to say, “Would that we'd had your suggestions before or that we had consulted you before because we might have been able to incorporate some of your suggestions.” I don't know. I'll wait and see what Mr Dunlop has to say. Thank you for coming.

The Chair: Thank you, Mr Marchese. Mr Martin, a quick question?

Mr Tony Martin (Sault Ste Marie): There's another case happening in Sault Ste Marie right now of even greater severity, if I read it correctly, where a person abused children over a long period of time and didn't get caught until recently, some people coming forward and making the case. In light of Bill 101 and your comments,

would Bill 101 have been useful in that instance or would we have needed what you're suggesting here today?

1610

Mr Nicholson: The problem is that by the time charges are laid or somebody is convicted, in either case, the issue I think reaches the public and something then is done about it, whether it's in legislation or not—just the liability of school boards and the public awareness of it. Unfortunately, as we've seen by the hundreds of cases identified by Goldie Shea in the law commission reports and as we've seen in Sault Ste Marie, that abuse goes on for 10 or 20 years before those charges are laid.

When children's aid societies do joint investigations, at times the police pretty quickly say, "We don't have enough evidence for a conviction." Certainly our role is the prevention of child abuse, and we have a lot of evidence in the very early stages that this behaviour is posing a big risk to children. At times we even wonder—or there may be some fairly clear evidence—that based on a balance of probabilities, abuse is probably going on. If that information could be given to school boards, I think it could protect a lot of children a lot earlier and prevent a lot of this abuse from continuing for years and years.

Mr Martin: To respond as well to some of the concern that is raised by professional associations that might represent people who are in supervisory capacities over children, if you discover early that there's a pattern, you can not only protect the children, but it seems to me you could also suggest to the school board a process of counselling and perhaps healing for somebody who needs some professional assistance or advice in these circumstances, and not only help one side but help both sides in this whole very difficult and terrible reality that happens out there.

Mr Nicholson: I agree. It really would be to the benefit of both parties. It would prevent further abuse of children, and it could potentially end a pattern of behaviour that could become more damaging.

Mr Martin: What you're saying as well is that if the children's aid society has the power it needs to do the investigation and report, in fact remedies could be recommended that don't necessarily include the police or the courts. Is that correct?

Mr Nicholson: I think if we could give that information to school boards and if there are provisions in the legislation to make them aware of that, then the mechanisms already exist within their own system for addressing this, either in the employer-employee relationship or through the College of Teachers.

The Chair: I'll go to the PC Party.

Mr Garfield Dunlop (Simcoe North): First of all, I want to welcome you here today. I know it's a long drive to come down, and we appreciate your comments.

I'm curious: since the trouble in the Soo and Justice Robins's report and recommendations, can you say at this time whether you've been able to identify a lot more increases or decreases in incidents or drum up more attention to this problem in that region of the province?

Mr Nicholson: Actually, when we look at our reports of abuse by teachers, or allegations of abuse, we probably get about 10 or 15 a year across both school boards in Algoma. That's been a pretty stable number for our society over probably the past 10 years. I think the awareness has gone up. I don't know the numbers this year, but my impression is that there has been more sensitivity and more of an increase in reports. I think when administrators or teachers see things, particularly in Sault Ste Marie because of the attention these two cases have had, there is more sensitivity to that. Our worry is, will that sensitivity be there in a few years when these issues pass and other priorities come to the front?

Mr Dunlop: How much of that information do you share with the school board now?

Mr Nicholson: We share quite a bit with the school board, although that isn't a standard practice across the province for children's aid societies. Government regulations or government policy actually prohibit us from doing that, but because of the situations and the risk to children that we've seen, we feel we need to do that, just in all good conscience. What we'd like is provisions in legislation to give us better protection so we don't end up in civil court.

The Chair: Thank you, Mr Nicholson. On behalf of the committee, we appreciate your presenting on behalf of the Children's Aid Society of Algoma. That concludes the delegations, so I declare that order of business closed.

Our next order of business is clause-by-clause consideration of Bill 101. I'll put the question to the committee: are there any comments, questions or amendments and, if so, to which section or sections of Bill 101? We'll begin with the Liberal Party.

Mr Kennedy: I have some amendments. I have to say that I need the co-operation of the members of the committee in order to present some of these amendments, so I wonder if I could just give a very brief preamble as to why.

I think we've heard from numerous people giving testimony that the scope of the bill is too narrow. In order for an amendment to be made that would address that particular concern and requirement of this opportunity we have with Bill 101 to fully address the circumstances Judge Robins set out, it is necessary for other parts of the Education Act and potentially the Teaching Profession Act to be amended. So in putting forward some of the motions I have, I am looking for unanimous consent that they be considered. Hopefully you, as members of the committee, would also consider them on their intrinsic merits, but I understand from speaking with legislative counsel that I would need unanimous consent not to have these just ruled out of order. I would like to believe that in deference to the testimony we just heard, and earlier testimony, we would at least give consideration to the changes that are inherent in the amendments I'm putting forward.

Mr Chair, with that, if you like, I could ask for unanimous consent before presenting an amendment—I understand mine is in the first sequence—and see whether that is the wish of the committee. Do you wish to seek that?

The Chair: You would have to read your amendment to the committee and make a motion.

Mr Kennedy: OK, I'm happy to do that.

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

"0.1 Subsection 11(1) the Education Act, as amended by the Statutes of Ontario, 1993, chapter 11, section 11, 1996, chapter 12, section 64 and 1997, chapter 31, section 7, is further amended by adding the following paragraphs:

"screening of persons applying to work in schools

"28. requiring screening, including but not limited to criminal record screening and disciplinary record screening, by boards of teachers, temporary teachers and other staff members, including but not limited to educational assistants, custodians, clerical workers, technicians, psychologists and testers, who apply for employment in schools governed by a board;

"screening of certain volunteers

"28.1 specifying classes of persons who volunteer to participate in activities in schools governed by the board and requiring screening, including but not limited to criminal record screening and disciplinary record screening, by boards of persons in the specified classes, in a manner and to an extent consistent with the functions and voluntary status of the persons in each of the specified classes;

"education to prevent abuse

"28.2 requiring education and training by boards of staff and volunteers who perform duties or functions in schools governed by boards, and requiring education and training by boards of pupils enrolled in those schools and the parents of those pupils, to provide them with appropriate knowledge about what constitutes sexual and other types of abuse and how to protect pupils from sexual and other types of abuse."

The Chair: That amendment is out of order. I will present a ruling, referring to Beauchesne's Parliamentary Rules and Forms, the section titled "The Admissibility of Amendments in Committee:"

"(8)(a) An amendment may not amend a statute which is not before the committee.

"(8)(b) An amendment may not amend sections from the original act unless they are specifically being amended in a clause of the bill before the committee."

Mr Kennedy: Again, I seek unanimous consent for consideration of this, because I understand with unanimous consent we could have this considered.

1620

The Chair: Do we have—

Mr Kennedy: I wonder if I could speak to that very briefly?

Mr Peter Kormos (Niagara Centre): Mr Chair, on a point of order: I trust that the goal of this committee is to address—because this isn't going to be revisited for a good chunk of time. All three caucuses in the Legislature are in agreement. You heard that during the course of second reading debate around this bill, and I trust you're going to see a similar agreement when the bill gets to

third reading. Here's an effort. If there are arguments to be made against these—

The Chair: Mr Kormos, that is not a point of order.

Mr Kormos: No, but I'm engaging in the debate.

The Chair: You are, correct, but that is not a point of order.

Mr Kormos: That's OK, but I'm engaging in the debate. I have the floor.

The Chair: We have a request for unanimous consent.

Mr Kormos: Well, no. You had interrupted that, as I recall.

Mr Kennedy: Are we not permitted to speak to the request for unanimous consent, Mr Chair?

Mr Kormos: If Mr Kennedy withdraws it, I can speak to this briefly, because we can re-present that request for unanimous consent at any time, can't we, Chair?

The Chair: I'll check with the clerk whether it's appropriate to debate a motion that has been ruled out of order.

Mr Kormos: But I'm simply—

Mr Kennedy: With respect, Mr Chair, I did request unanimous consent before you made a ruling. I think it's only proper that the committee be given the chance to consider that request for unanimous consent. With all due respect, Mr Chair, I made that my opening comment in presenting this amendment. I was then asked to read the amendment, I thought so we could entertain the discussion of unanimous consent that I did request. I'm sure Hansard will support that, Mr Chair. I opened up saying that I would need unanimous consent in order for this to be brought to the committee's consideration, and I am still seeking that.

The Chair: OK, Mr Kennedy, do you wish to stand down your request for unanimous consent and undertake debate by the committee of this amendment which has been ruled out of order?

Mr Kennedy: I'm happy to do so if that will enable debate.

The Chair: Yes. We'll start with the Liberals and then the NDP.

Mr Kennedy: Let me just speak very briefly, and I'm sure there will be some interesting comments that are already engaged by the member from Niagara. In essence, this particular amendment speaks to some of the gaps in the bill that were basically suggested. There are other classes of people found in the Robins report, found in the situations of Mr DeLuca, that should be included. It makes sense to me that if we're going to be opening up an area of legislative purview where we say, "We need to make laws to protect children"—and that's what Bill 101 obviously does—we do so in as logical and comprehensive a fashion as we can and not stigmatize any one class of people. In this case it's teachers in the public education system, but I think the thrust of this bill, if I understand the minister's explanation, is that anyone in a position of authority should be subject to some level of screening and some level of sanction if they step out of line.

This particular motion addresses that by requiring screening to take place for other people. Actually, I believe Bill 81 provides for background checks for teachers; this adds other classes of people who would be subject to screening, including volunteers. And it does stipulate here only “to the extent necessary,” so we wouldn’t put onerous requirements on volunteers.

It also stipulates something that Robins asked for very explicitly. In about seven different places, he asked for education. He says, in fact, in the report that the main burden of his report, the most important finding in his report, is the need for prevention. In other words, if we don’t entertain this amendment, or amendments like this, we will walk away from this committee not having dealt with the principal thrust of the Robins report. We will not have done our duty, I would suggest, in the sense of seeing a balanced bill that goes forward that will allow the greatest deal of protection that we in this Legislature have an opportunity to provide.

I would say to you, as members of the committee, that while the rules of order may say this is a difficult motion, it is squarely within the spirit of what I understand the Minister of Education and the parliamentary assistant say the bill is meant to address. I would really be sadly misinformed, I guess, if that turned out not to be the case. I take the minister’s and the parliamentary assistant’s comments at face value that the only object in this bill is to afford greater protection. If we accept in this Legislature, as we’re asked to in Bill 101, the idea that to get greater protection for students, we have to have special laws, because there’s a special relationship between students and people of authority in the school setting, then it follows very logically—and Justice Robins identifies it in many instances. In fact I think in every recommendation he includes these other classes of people who will come in contact and who will form authority bonds with students and should be subject to this other extra protection that we’re going to afford them and this extra amount of scrutiny that we’re asking to be provided. It seems to me, without that, it does leave a big hole in our credibility in terms of bringing this bill to conclusion.

If we think about the school day and all those circumstances where children are in the hallways, in the playgrounds, in washrooms that are being cleaned, they’re in a whole bunch of situations and they’re not in the direct care of their teachers. I would be very happy in this debate to learn from the government’s side why that was a deliberate exclusion or, if it isn’t an exclusion, maybe we could have their support to have this brought back into the purview of this debate. Again, that’s what I’m seeking.

The Chair: Further comments?

Mr Kormos: Very briefly, I’m encouraging the committee to give unanimous consent should it once again be sought. I understand the ruling of the Chair and I accept it, but I also interpret and perceive the ruling of the Chair as being the most conservative application of the rule. Clearly, the Education Act is one of the bills being

amended by this bill before the Legislature now, no two ways about it. So in that respect, there is at the very least some consistency.

A more important issue, and it’s already been referred to by Mr Kennedy, is that, no two ways about it, Bill 101 is very much in no small part a response to the Robins report, number one. The amendments contained in this motion are amendments which derived their thrust from the Robins report. It’s an incredibly non-partisan motion. It’s one that is designed to make this bill more effective and better than what it is, with the concession being that the bill, as it stands, has some significant value.

Very briefly, understand this from a practical point of view. And please, I don’t want to defeat my argument by appearing partisan, but the reality is—and it’s been a matter of a whole lot of debate—that there’s a whole lot more contracting out in schools. The reference to, let’s say, custodians is a very relevant one because no longer in a school milieu is there necessarily, because of the phenomenon of contracting out—and again, you know my views on that. It’s a totally different issue, but the fact is that contracting out is happening. In days gone by, the custodian—male or female—was in that school for decades, saw generations of kids graduate from that school and was part of that broader and tight-knit school family or school community. Now with the phenomenon of contracting out, you’ve got people coming into school contexts, into school grounds, into school buildings, even into classrooms on a very ad hoc basis.

I think the realities of 2001 and the fact that this amendment very much joins with what is the clear government intent in putting this bill forward makes the amendment worthy of debate. Should the government decide to vote it down, so be it, but, please, don’t avoid the debate and the need to reflect on the validity of these amendments by simply relying upon it being technically out of order when in fact you can put it back on the table in this context, in this committee, in this debate, by participating in the unanimous consent.

The Chair: Any further discussion or comments? Seeing none, Mr Kennedy.

Mr Kennedy: I’ll be guided by you, Mr Chair, the clerk and then perhaps other people in terms of the procedure, but I would like to ask again for unanimous consent. I’m wondering if that can stand as a separate motion, or do I have to have that inherent when presenting the amendment? I wonder if I can get a ruling as I don’t wish to take up an inordinate amount of time.

1630

The Chair: I think once an amendment is declared out of order, you can, at that point, request unanimous consent.

Mr Kennedy: I guess I would ask for unanimous consent of the committee for the motion to be received and moved. This is not support for the amendment but rather that it be considered.

The Chair: And I would ask the committee, very simply, is there unanimous consent?

Mr Dunlop: Mr Chairman, we don’t have unanimous consent on this side.

The Chair: There is no unanimous consent.

I would ask the committee now if we would move to Liberal motion number 2.

Mr Kennedy: I will present this motion, Mr Chair. I move that the bill be amended by adding the following section:

“0.1.1 The Education Act be amended by adding the following section:

“11.1 Money required to fund the screening, education and training required under paragraphs 28, 28.1 and 28.2 of subsection 11(1) before April 1, 2002 shall be paid out of the consolidated revenue fund and thereafter shall be paid out of the money appropriated for that purpose by the Legislature.”

I appreciate that this motion is out of order, and I'm sorry we couldn't find an in-order means to propose it. It is a message I want to make sure the government side has, that this bill doesn't contain the resource amendment that would make this a serious bill to prevent abuse. There is no part of this bill that actually gives the funding that Robins asked for in six different places. He said that the provincial government has the responsibility to ensure that victimized students obtain counselling and therapy; screening of teacher applicants and reference checks; drafting more comprehensive policies and protocols; providing adequate training and training materials; resources to conduct an adequate investigation of allegations, including support and counselling; and resources to deal with litigations extending from false allegations. He's asked the provincial government to provide those.

I would say that unless there's some assistance we can obtain from the clerk to make this an in-order motion, I would not seek unanimous consent but rather have those comments on the table or ask if there is any other assistance I can obtain to make this something we can consider today.

The Chair: Mr Kennedy, this amendment is out of order, contravening standing order 56. The problem is that it has made reference to the consolidated revenue fund. I can give a ruling if the committee wishes. Again, referring to the standing orders of the Legislative Assembly: “Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown.” We would not ask for unanimous consent on that.

Mr Kennedy: I understand. I'm not contesting that. I understand it's ultra vires. The committee can't do that.

The Chair: Thank you. Now, I would ask the committee to consider Liberal motion number 3.

Mr Kennedy: I very much wish to speak to this motion ahead of time, Mr Chair. This is another level-playing-field amendment that would seek to put private schools in this province on a level playing field. I can read this into the record—some of it is self-explanatory—and then provide for it—

The Chair: Yes, normally we would read the amendment for the committee.

Mr Kennedy: OK. I move that the bill be amended by adding the following section:

“0.1.2 Section 16 of the Education Act, as amended by the Statutes of Ontario, 1996, chapter 11, section 29, is further amended by adding the following subsections:

“Regulations, prevention of abuse

“(10) The Lieutenant Governor in Council may make regulations in respect of private schools,

“(a) requiring screening, including but not limited to criminal record screening and disciplinary record screening, by persons concerned in the management of private schools, of persons employed to teach in private schools and of other staff members, including but not limited to educational assistants, custodians, clerical workers, technicians, psychologists and testers, who apply for employment in private schools;

“(b) specifying classes of persons who volunteer to participate in activities in private schools and requiring screening, including but not limited to criminal record screening and disciplinary record screening, by persons concerned in the management of private schools, of persons in the specified classes, in a manner and to an extent consistent with the functions and voluntary status of the persons in each of the specified classes;

“(c) requiring education and training by persons concerned in the management of private schools of staff and volunteers who perform duties or functions in those schools, and requiring education and training by persons concerned in the management of private schools of the pupils enrolled in those schools and the parents of those pupils, to provide them with appropriate knowledge about what constitutes sexual and other types of abuse and how to protect pupils from sexual and other types of abuse.

“Duties, charges and convictions

“(11) Every person concerned in the management of a private school shall,

“(a) on becoming aware that a person employed to perform duties in the school has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that, in the opinion of the person concerned in the management of the school, indicates that pupils may be at risk, take prompt steps to ensure that the person performs no duties in the classroom and no duties involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;

“(b) on becoming aware that a volunteer participant in activities in the school has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that, in the opinion of person concerned in the management of the school, indicates that pupils may be at risk, take prompt steps to ensure that the volunteer performs no functions in the classroom and no functions involving contact with pupils, pending withdrawal of the charge,

discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be.”

The Chair: This amendment is out of order. Just to further explain my ruling, which refers to section 16 of the Education Act—and we are dealing with section 170 of the Education Act—I previously referred to Beauchesne, Parliamentary Rules and Form. Just for the record, I’ll also refer to another reference, Marleau and Montpetit: “An amendment to a bill must be relevant; that is, it must always relate to the subject matter of the bill or the clause under consideration. For a bill referred to a committee after second reading, an amendment is inadmissible if it amends a statute that is not before the committee.”

Mr Kennedy: Again, Mr Chair, I’d like to address that because I would like to seek unanimous consent, but I’d like to put forward the reasons for that. In this particular section, this would simply extend some of the same language. The previous concern I had at the lack of screening and education would apply to people who are in a position of trust in private schools. As currently constituted, without these amendments, Bill 101 takes a complete miss on a whole class of people. Roughly speaking, we’re looking at 50,000 children in Ontario. Half of the children in independent, so-called private schools do not have a certified teacher at the front of the classroom and are not subject to the provisions of Bill 101 in terms of that class of teachers. So it is very important, as we are putting an onus on publicly funded school boards, that we put the onus on those who are responsible for the management and direction of private schools.

Even the ideological inclination that may be shown by some people, and perhaps some people of influence in this party in power, how would that justify not providing the very same protections that the rest of the bill would provide to some students in this province? Because we’re in favour of private schools as a place of education, how then, even at that point, does it follow that you would not make children fully protected in those situations?

Again, to just reference very quickly, the very idea of the bill is that some special protection is required, because beyond the other laws and protections we have in place, children are in a vulnerable position because of the trust and authority relationships that exist in the school setting. I would say this would be true at any time, but it is particularly true because we are now acting under a regime of regulation and law that came with, I believe, Bill 45 or the budget enabling bill from last session, that actually now puts public money into these schools. So these requirements aren’t only ethically desirable, but from a point of responsibility taking, without these requirements we’re actually saying that public funds will be dispersed into jurisdictions and into the classrooms where basic elemental protections—I think the support that Bill 101 has to the extent that it addresses these concerns is based on the elemental concern that children be free from abuse. How can children be free from abuse if we’re going to say they enter into certain

classrooms and they don’t get these protections? This is one part of the enabling language of the bill, to be able to provide for children in those private schools.

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I would really enjoin the members opposite to provide some support for this. In fact, I don’t see it as challenging any other priority directions this government has in favour of private schools over public schools. That’s beside the point. The point here is that children’s safety should be paramount in whatever school setting they’re in. We are, because of the government’s actions to put public money into private schools, actually in a position to have direct influence.

I’m sure that government drafters could come up with even more compelling ways in which we could exact that minimal standard from the very many private classrooms across the province where children are at risk. I say children are at risk not to denigrate any of the efforts being made in those school settings, but simply because the premise of Bill 101, the premise of the Robins report, is that children are at risk. But there’s an incomplete legislative framework here to provide the very best protection we can. I think we don’t have any illusions that the laws we pass are going to be the basis for a better risk, but that somewhere along the way, in the prevention and education programs, for example, that Robins has asked for, and a range of other things, we will be making children safer. But it is wholly and largely inconsistent to me that we would not then, if we accept that logic, if that’s the premise of the bill, if that’s what we’re being asked to support, make sure that every school child in the province has the same protection. For that reason, I would ask for the members’ support for consideration of this particular amendment.

Mr Marchese: Chair, I wanted to speak to that.

The Chair: To Liberal motion 3?

Mr Marchese: That’s why I had my hand up.

The Chair: Sure. Please proceed.

Mr Marchese: Very briefly, I just want to say to the Conservative members with respect to this—and I’ll have an opportunity to speak on third reading, so I’ll take my time there—that it’s sad. Here we have amendments that help your bill, that help to protect young people, whether they’re in public or private schools. What you’re doing through your legislation is making it impossible for students in a private school who are taught by non-certified teachers to be protected by the law by not being subject to the law. It concerns me that you are not concerned about how it is that you’re going to protect those young people in those private schools. I don’t understand. The purpose of the bill is to protect children from potential abusers, and some people in the teaching profession are not subject to the law. It worries me that it doesn’t worry you. I’m not quite sure how you’re going to deal with that, but by not responding to this amendment in this way or just this debate around this issue and leaving those young people vulnerable, I don’t know how you don’t see that you contradict the very purpose of the bill. I’ll speak to that on third reading.

The Chair: Mr Kennedy has requested unanimous consent with respect to Liberal motion 3, which has been ruled out of order. Is there unanimous consent?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): No.

The Chair: I see no unanimous consent.

Our next order of business is an NDP motion to Bill 101.

Mr Marchese: I think you all have a copy of that. Gerard, it's right beside you. Just to speak to this, with respect to the submission that Mr Nicholson has made, he raises many good points, but one in particular, and that is that children's aid societies should report their findings respecting abuse of a pupil to the board of education. When they find that there's been some sexual abuse of any kind, it ought to be their duty to report to a board of education those findings so that we can protect young people. It's a reasonable request.

I'm told by the staff of the ministry that we're dealing with a different ministry, and I understand that. It's sad for me, once again, when we're in the business of protecting young people, that the argument made against this is, "This is covered by a different bill. Sorry, we can't cover that in this bill." So we have to wait for the Minister of Community and Social Services to come up with something and to say, "This seems like a reasonable, good idea. We'll pass something and link it to the bill that we just passed here and everything will be OK." My sense is that won't happen. My sense is the minister of Comsoc simply will not do this. We leave ourselves vulnerable. If a children's aid society through their work discovers or uncovers that there is an abuse of any kind, it ought to concern us, and we would want to know as a board of education. But the staff say, "Sorry, it's not part of this bill. It's the jurisdiction of a different ministry. Too bad. There's nothing we can do."

Once again, I don't know if Mr Dunlop is going to comment on this. I hope he does before I move a motion. I would like to hear from him. If he says, "Yes, we're going to rule this out of order," I hope we can get a commitment from Mr Dunlop and the other members that they will raise this issue with the minister of Comsoc and commit themselves to speaking to him to bring in an amendment that addresses at least this part, or anything else, for that matter. That's all I want to say about this before I move my motion for unanimous consent. I hope Mr Dunlop will comment on this, or others.

Mr Dunlop: Now or after you read it?

The Chair: We would have discussion before the amendment is read.

Mr Dunlop: Certainly we'll raise your concerns with Minister Baird and also with the Attorney General, because it impacts both those ministries. But we won't be supporting the draft motion that I have in front of me at this time, unless you've changed it somewhat.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): I've got a couple of comments from some of the presentations that we heard last week. If I recall, Mr Larry Capstick—I can't remember which day he was here last

week—said that the College of Teachers should take the position that we should move forward in small steps. I think Liz Sandals was also quoted as saying, "You can write truckloads of policy, but if you don't change the mindset, then it's just another policy on a shelf."

Basically, you're quite right in voicing some concerns, but you don't really address the real issue. You're playing politics with a couple of words here, I would strongly suggest to you on the other side. I really question the sincerity of your comments in the introduction of this particular amendment, especially at the last minute.

Mr Kennedy: On a point of order, Mr Chair: I don't think it's within the standing rules that the motives of members be questioned by another honourable member. I understand that we're in the process of debate, but I believe that is outside of the rules for debate and I would strongly ask for your intervention after that suggestion.

The Chair: I didn't hear what Mr Beaubien said, Mr Kennedy.

Mr Marchese: It doesn't matter. It's OK. We'll be on the list again.

The Chair: Further discussion?

Mr Michael Bryant (St Paul's): I've been listening to the able submissions from my colleague Mr Kennedy and hearing from Mr Marchese in seeking unanimous consent. At least Mr Beaubien seemed to be engaging in an intent to explain why this government is taking the position that they're taking. I remember an analogous situation where this committee was considering a bill which required changes to other bills and the involvement of other ministries. It was a bill brought forward by a member of the government caucus, Ms Molinari. We sat around here and we worked very hard to try to get that bill right. I remember Ms McLeod may have saved that bill from demise—and Ms Molinari acknowledged that on the record—by putting forth an amendment that basically permitted it to be carried over to another day. We actually tried to do what committees are supposed to do.

I'm not for a moment suggesting that any particular caucus or party has a monopoly over the truth on any one issue. If the government wants to speak to the issues raised by Mr Kennedy and Mr Marchese and say, "You know what? You're wrong. In fact, here is why we don't want to provide those protections for private school students," and engage in the debate—and we did that. I confess I regret that we are now in a situation where the opposition parties co-operated with the government in order to get that bill passed. Why? Because we thought it was going to do a good thing. We thought it was going to save lives and certainly help protect young people. That's what Mrs Molinari's bill was about. That's the gist of what is before us now.

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This government is now, when faced with opposition amendments, unwilling to make those changes. I think it transforms this committee into nothing more than a partisan charade, and committees don't have to operate this way. This committee has not always operated in this

way in the past, and it's operating this way right now. I challenge the members of the government not to hide behind this procedural ruling and to speak to the issue, as we have done before when we helped get one of your member's bills through this committee and passed.

The Chair: I thank all three parties for that discussion. I would ask Mr Marchese to make the amendment.

Mr Marchese: I was going to comment on something, very briefly. I don't want to spend too much time on this.

The Chair: Mr Martin, you wish to speak as well?

Mr Martin: Yes.

Mr Marchese: Mr Chair, I just wanted to respond to Marcel, because I think his comments were a bit hurtful. He's been here long enough to know when we do things for political reasons. I'm introducing a motion, and it's very brief. Whoever is watching probably would know that one isn't introducing this amendment for political reasons, for God's sake. So I don't understand where he's coming from with that comment.

The children's aid society shall report findings of abuse of a pupil by an employee of a board to the board. What's political about that? I don't get it.

Anyway, when we make changes at the last moment—and some things happen at the last moment—if you find that it's reasonable, it's not a big deal. If you think it'll enhance your bill to protect students, then you say, "OK." I just wanted to say to Marcel that I didn't find his comment very helpful.

Mr Martin: I wanted to clarify for Mr Beaubien as well. He was in the House when we spoke to this at second reading, and I thought I heard from him a voice of conciliation and co-operation and working together, because we all agreed we would support it and move it forward. I asked that night when I spoke that we give this due consideration, that there be time for public input and actually that we travel the province with it, because this is a huge issue. He agreed that night that it is a huge issue that touches a lot of communities across this province, not only education systems but all kinds of systems where children are under the supervision of adults in institutions. In fact, it was I who came in here last week and got unanimous consent from the committee to have the children's aid society come forward, because we had missed the boat, so to speak, in not coming forward earlier to have that group present as part of the public consultation last week. You were gracious enough to entertain the gentleman this afternoon, and I thought he made some very important points.

If we were truly interested—and I have to tell you that I am; I've lived this for quite some time. I was a trustee on that school board before I became a member of this Parliament. There's still a lot of pain in that community and a lot of real concern in that community, not only about our community but other communities, that if we don't put in place the kind of things that Mr Nicholson suggests are needed—because he read the Robins report and responded to the Robins report. I picked up his response, and we moved forward a bill before we

prorogued last session, which got lost because of that prorogation. Now we have a bill before us, an opportunity before us to actually do the right thing and make sure we put in place everything we can, as leaders and politicians, to protect children.

I have just one last thing. To suggest that somehow this is political in a negative sense is not true. Certainly it's political. This is a political forum, and we're all politicians. We participate in that wonderful art here. I think it's that art, if it's done properly, that gets us to a point where we have legislation that actually works for people.

I don't know why this amendment, which my colleague puts forward, that references changes to the Education Act such that we can in fact protect children, which is what this act is trying to do, would be found to be out of order. I really don't understand that, and that will have to be explained to me. Maybe my mind's not of a legal nature or a technical enough nature. But to find this out of order—as a layperson trying to do something here today that will protect children in the long haul, particularly back home in my own community, I just don't understand that and would encourage people to perhaps, if necessary, override that ruling by unanimous consent and support this amendment.

The Chair: Any further discussion? Mr Marchese, do you wish to make a motion?

Mr Marchese: Shall I move it first?

The Chair: Discussion before he makes his motion?

Mr Kennedy: Very quickly, I just want to suggest that I appreciate both the spirit and the content of this proposed amendment. I think we heard a very compelling argument being made—at the last minute, I understand, but certainly I don't think that process problem should be placed at the feet of either the person who made the argument or Mr Marchese. I really do think it's incumbent on us—and I asked the question very bluntly of the gentleman from the Children's Aid Society of Algoma, where everyone is aware, and Mr Martin has reminded us, these problems arose. I don't think we're doing justice in this amendment, but at least we could start to pay attention to this by giving this amendment consideration, and I would support it for that reason.

The Chair: Further discussion? Mr Marchese.

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

"0.1.3 The Education Act be amended by adding the following section:

"Reports by CAS

"57.1.1(1) A children's aid society shall report findings respecting abuse of a pupil by an employee of a board to the board.

"Same

"(2) Boards shall be duly diligent in monitoring and investigating reports received under subsection (1)."

The Chair: The amendment is out of order. It refers to section 57 of the Education Act, not subsection 170 of the Education Act, and the reasons for the ruling are found in both Beauchesne and Marleau and Montpetit.

Are you now requesting unanimous consent?

Mr Marchese: Unanimous consent to submit this motion.

The Chair: Do we have unanimous consent to accept this amendment, which has been declared out of order? I do not see unanimous consent.

The next motion before us would be Liberal motion number 4.

Mr Kennedy: This is perhaps the most important amendment, in the sense that it suggests in some detail—and I want to commend legislative counsel for their hard work in coming up with what is quite a serious amendment. I think you'll understand and appreciate as you read through this particular amendment that it is about trying to give a reasonable, workable framework for how persons in charge of classrooms around this province who are not certified teachers, and therefore not currently subject to the authority of the College of Teachers, could also be subject to the very same intent—no different intent—as the one that the government bill has put forward.

In large measure, this is helping to complete the government bill. In terms of its necessity—the committee's time is valuable—in approximately 2,000 classrooms in private schools and approximately 2,000 classrooms, and likely considerably more, in public schools, at the front of the class are—and the minister and the parliamentary assistant will know; they give out the letters of permission—unqualified teachers, teachers who are not members of the college, who have not gone through the rigorous training that teachers have in this province and therefore are teaching in the very same trust position; in fact, sent there with the minister's consent. As well, there are people on so-called short-term assignments, put there by boards, and they number in the hundreds. Primarily this is a framework to get at, in a normalized situation, teachers who are uncertified.

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I remind the public and members of the committee—I think they are probably aware—that currently there is no requirement to be certified if you teach in a private school, and there are these other circumstances as well. So roughly 4,000 classrooms in this province, and probably more, are affected by this amendment. This amendment sets up a parallel structure to at least have some oversight, the very same oversight that the government would argue we have to have, and the very same oversight that Bill 101 brings before this House. It offers instead some substitution for the College of Teachers, with some power on the part of the minister to act on at least a certain kind of basis to investigate charges and allegations and provide not just protection but also some level of due process so that the people who may be subject to these various allegations are also subject to some protection.

I would say that without this we have the Wild West out there in terms of certain classrooms in this province. Why should there be some classrooms that have to have the protection of Bill 101 and others that shouldn't? How

does that work? What's wrong with those kids? How are those kids any different from the kids who are, in the case of a publicly funded school, right next door, or in the case of a private school, down the street? How is it different? How does it make any sense not to include those kids?

This amendment, in some detail, mimics or parallels the provisions we already have in front of us in the main body of the government bill, Bill 101. I would say with very much humility that this is not about changing what the government wants to do. This is about completing what the government has told the province of Ontario its root concerns are. I'd be very happy to learn of one, but I can see no other way to look at this. If the member opposite also wishes to describe this as political—this is the result of some fairly reasonable work and doesn't change any other policy options of the government. In fact, it doesn't get in the way whatsoever. You are the government. You've made certain choices. We may disagree with them, but certainly at a root level, when it comes to the protection of children, this doesn't have to get in the way.

I would say that here you have a framework that doesn't preclude anything else you're doing in terms of putting money into private schools and all those other things with which we vehemently disagree. It simply says that those children count just as much when it comes to something of this elemental nature, which is the legislative protection they should have. I think it is hard for most people to appreciate why we wouldn't do this. Again I would draw attention particularly to the fact that there are classes of pupils in both public and private systems around the province that would be exempted from the efforts that Bill 101 makes without an amendment of this type.

Mr Marchese: I agree with Mr Kennedy, and I will debate that issue on third reading in the Legislative Assembly.

Mr Dunlop: I have some comments that I'd like to read into Hansard on this motion. First of all, the bill we have in front of us, Bill 101, focuses on responding to Robins's recommendations related to the Ontario College of Teachers. The Ontario College of Teachers cannot regulate the conduct of non-members. Uncertified teachers who are employed as temporary teachers by school boards are covered by the proposed amendment to section 12 of the Education Act. Changing the college's mandate to include regulation of uncertified teachers would require amendments to the Ontario College of Teachers Act that are beyond the scope of this bill.

The reporting requirements of the Criminal Code and the Child and Family Services Act already cover all employers and employees. The bill was intended to be respectful of labour relations, and this amendment would interfere with labour relations.

I would also like to point out to this committee that this bill was designed to address a very specific need; that is, the powers of the Ontario College of Teachers. Other measures have been and will be addressed by other

pieces of legislation by the ministry and by others. I would just like to make those comments and have them in Hansard.

Mr Kennedy: I wonder if I could say very briefly in response that Justice Robins asked the government to deal with independent schools. So I guess I would put back to the parliamentary assistant: is there a plan on the government's part to address private schools and, as well, to address unregulated teachers in public schools? Is that going to be forthcoming? Is that something we can expect in a different form, and would that be part of the rationale for not entertaining this at this time?

Mr Dunlop: The government is looking at other ways to address the problem Mr Kennedy has pointed out.

Mr Marchese: Briefly, because I'll debate later, we're dealing with a bill that is designed to protect students from sexual abuse or sexual predators. You agree with that. Those teachers in the private schools who are not certified will not be covered by this legislation. You understand that, I understand that and we agree it's a problem. You're assuring us and whoever is watching that, yes, the College of Teachers does not address the fact that those non-certified teachers—you're agreeing that this bill leaves a big gap in the private school system, because those non-certified teachers are not covered by this law, and so you are worried about that. Your notes seem to indicate that you're concerned too, and you're assuring us that not through this bill—because the College of Teachers only deals with teachers; we understand that. Those other people who are teaching, who could be committing some sexual crime or other and will not be covered in this legislation—you're saying, "Don't worry, they will be covered." You understand that at the moment we're only dealing with this bill and we're worried. You're saying, "We know. We made a mistake. It doesn't cover it. But it will be covered some time by another bill from this minister or some other minister." That's what you're saying.

Mr Dunlop: Yes, that's what I'm saying. I'm saying that we consider this bill a stepping stone and that we are looking at measures in other ways to address the problem you brought up today.

Mr Marchese: We have brought it up for the last couple of months or weeks.

The Chair: Any further discussion from members of the committee?

Mr Kennedy: Only just very briefly, and further to the comment made by the parliamentary assistant that this amendment does recognize that the College of Teachers Act would have to be amended, this specifically provides for the minister to act in substitution, not for a so-called amendment to the College of Teachers Act. In other words, this deals with the existing situation. Again, I want to compliment legislative counsel. This is a remedy that would at least allow it in the meantime. If there is some goal of the government, as it provides funding to private schools, to also make them subject to standards and whatever have you—we don't know that that's the will, but this is an in-between measure that

should at least merit discussion and debate. I would hope that direct consideration by this committee wouldn't be precluded. Therefore I move that the bill be amended by adding the following section:

"0.1.3 The Education Act be amended by adding the following section:

"Requirements Respecting Teaching By Uncertified Persons

"Reporting duties: uncertified teachers

"57.3(1) Subsections 43.1(2) and (3) and sections 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 apply, with the specific modifications set out in subsection (2) and such further modifications as may be necessary, where a person or body employs or employed a person who is not a member of the Ontario College of Teachers,

"(a) to teach a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less; or

"(b) to provide services, including support services, related to the education of a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less.

"Same

"(2) The following are the specific modifications referred to in subsection (1):

"1. The reference in subsection 43.1(2) of the Ontario College of Teachers Act, 1996 to 'the purposes of subsection (1)' shall be read as a reference to the purposes of subsection (1) of this section.

"2. The reference in subsection 43.1(3) of the Ontario College of Teachers Act, 1996 to 'this Part' shall be read as a reference to this section.

"3. The references in section 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 to a 'member' shall be read as references to a person who is not a member of the Ontario College of Teachers.

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"4. The references in sections 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 to the 'Registrar' and to the 'College' shall be read as references to the minister.

"5. The references in sections 43.2 to 'professional misconduct' shall be read as references to conduct that would cause a reasonably diligent employer to conclude that pupils may be at risk.

"Regulations

"(3) The Lieutenant Governor in Council may make regulations,

"(a) governing the duties of the minister following receipt of a report under this section, including but not limited to regulations requiring the minister to cause an investigation to be made into the conduct of a person in respect of whom a report is made under subsection (1);

"(b) providing for procedural guidelines and rules to be followed in an investigation under clause (a);

"(c) authorizing the person carrying out the investigation to adopt procedures for the investigation consistent

with any guidelines or rules provided for under clause (b);

“(d) specifying findings or classes of findings that may be made at the conclusion of an investigation under clause (a);

“(e) setting out the consequences of various findings or classes of findings made under clause (d);

“(f) providing for appeals and reviews in relation to findings and consequences of findings, including but not limited to providing for procedures and remedies;

“(g) authorizing the minister to maintain records of findings made under clause (d);

“(h) requiring the minister to provide information specified in the regulations to a person or body who employs or employed the person in respect of whom a report is made under subsection (1).

“Same

“(4) Without limiting the generality of clause (3)(e), a regulation under that clause may,

“(a) prohibit the person in respect of whom the report is made under clause (3)(a) from performing functions referred to in clause (1)(a) or (b);

“(b) provide for limitations or restrictions respecting the performance of functions referred to in clause (1)(a) or (b) by the person in respect of whom the report is made under clause (3)(a).

“Same

“(5) Any person or body that is contemplating employing a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) shall, before entering into an employment agreement, make a written inquiry to the minister to determine whether there is a prohibition, limitation or restriction under subsection (4) that relates to the prospective employee.

“Same

“(6) The minister shall respond in writing as soon as is practicable to an inquiry made under subsection (5).

“Prohibition

“(7) No person or body shall employ a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) before receiving a written response under subsection (6).

“Prohibition

“(8) No person or body shall employ a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) contrary to a prohibition, limitation or restriction under subsection (4).

“Offence

“(9) Every employer who contravenes a reporting requirement under subsection (1) or who contravenes subsection (7) or (8) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

“Delegation

“(10) In addition to his or her powers of delegation under subsection 2(4), the minister may in writing delegate any of his or her powers or duties under this section to an official or committee of the Ontario College

of Teachers subject to such limitations as the minister specifies.”

The Chair: Thank you, Mr Kennedy. That amendment is out of order. It refers to section 57.3 of the Education Act, not section 170 of the Education Act. It's out of order for the reasons I have described to the committee.

Mr Kennedy: Mr Chair, I seek from the committee unanimous consent for this motion to be considered.

The Chair: We have a request for unanimous consent. This is Liberal motion number 4, which has been declared out of order. Do we have unanimous consent? We do not have unanimous consent.

We now go to section 1. We will consider Liberal motion number 5.

Mr Kennedy: I'm not seeking unanimous consent. This is, I understand, in order. The reasoning here is simply again the effort to do as much justice by Justice Robins as we can. This is providing for a corollary requirement that if there is a finding that pupils could be at risk, there are no duties in the classroom, not just by the teacher or temporary teacher or staff members but also by volunteers. It also provides that if volunteers have been charged or convicted, they will be subject to similar strictures.

So this provides an amendment that would allow for convictions of volunteers and charges and convictions of other employees also to be subject to some of the provisions of the bill.

The Chair: Discussion?

Mr Marchese: No. I support the motion and wonder whether the Tories have any prepared statement in opposition.

The Chair: I wonder whether we should actually have the motion before us and then discuss that. Do you wish to make the motion?

Mr Marchese: Once he reads it, isn't it on the record as a motion? You've already read it for the record, right?

Mr Kennedy: No. That was an earlier motion. This is a new one. I haven't done that yet.

The Chair: We have not heard the motion yet.

Mr Kennedy: I move that paragraph 12.1 of subsection 170(1) of the Education Act, as set out in section 1 of the bill, be struck out and the following substituted:

“duties - charges, convictions of employee

“12.1 on becoming aware that a teacher, a temporary teacher or any other person, including but not limited to an educational assistant, custodian, clerical worker, technician, psychologist or tester, who is employed by the board has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the teacher, temporary teacher or staff member performs no duties in the classroom and no duties involving contact with pupils, pending withdrawal

of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;

“duties - charges, convictions of volunteer

“12.2 on becoming aware that a volunteer participant in activities in a school governed by the board has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the volunteer performs no functions in the classroom and no functions involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;”

The Chair: Thank you, Mr Kennedy. Is there any discussion on that motion?

Mr Kennedy: Just a little bit further, I think the members are all imbued with the significance of this, which is that there are other people who hold those positions of responsibility. We have an opportunity with Bill 101 to put them on the same footing, I would say, in some ways, because teachers already have the regulation of the college and a fair bit of oversight into their actions and activities. This would be a very important addition to the bill to ensure that these other classes of people have the same strictures, but also the same validation which comes from saying that there is a process in place. Parents and other people who would normally have concerns for children in school would know there is a requirement that makes sense.

We would hope that boards are following this requirement on their own but, since this is all about giving some overall legislative direction, that that would include, if not a comprehensive—because we already heard earlier in this process parts which the government is not willing to entertain—a simple extension of the bill to include these classes of people.

The Chair: Any further discussion?

Mr Dunlop: I just wanted to point out or read a couple of comments. One is that through the passage of the Safe Schools Act, the government has already demonstrated its commitment to ensure a safe learning environment for our students.

The government intends to deal with provisions for staff other than teachers through the criminal reference check regulations.

Mr Kennedy: I want to say, for all the members opposite, that I'm sure their interest is just as sincere as ours, but I can't understand, if the approximately 600 pages of the Robins report are to really make sense, why we don't use this opportunity. We're dealing with a report that is over a year and a half old. We apprehend that in a very small number of situations, but enough that we should be concerned with the main bill in front of us, that there is more than criminal reporting that has to be dealt with, substantially more.

Over and over again, Justice Robins reminds us that dealing with it after the fact—we were told this morning,

and we were told by almost every presenter, that if you deal only with criminal reporting, you're dealing with a minority, a small minority, of situations that could cause harm to students. Instead we have to also—and this part doesn't do all the expansion that is possible, but it does deal with at least a level playing field, which would say that other classes of employees are subject to the same kind of strictures we put on registered teachers, who are the main thrust of the measures in this bill.

So again I would hope the government members, and all members of this committee, would support this bill in the spirit in which it is intended: to help complete the bill and help provide better protection for students whom we wish would never have to avail themselves of the measures that come out of it but who may find themselves in a situation of exploitation unless we do this.

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The Chair: Thank you, Mr Kennedy.

Committee, we have before us Liberal motion amendment number 5, an amendment to section 1.

Are members of the committee ready to vote?

Mr Dunlop: Sure.

The Chair: All in favour? Those opposed?

Mr Bryant: A recorded vote.

Mr Marchese: We have a tie.

The Chair: As Chair, I also vote no.

I declare that amendment lost.

If you wish a recorded vote, you would ask for that when I raise the question, “Are the members ready to vote?”

Continuing with section 1, shall section 1 carry? Carried. I declare section 1 carried.

With respect to section 2, shall section 2 carry? Carried.

With respect to section 3, shall section 3 carry? Carried.

With respect to section 4, we have a government motion before us.

Mr Dunlop: I move that section 43.2 of the Ontario College of Teachers Act, 1996, as set out in section 4 of the bill, be amended by adding the following subsections:

“Same

“(2.1) If a member resigns while his or her employer is engaged in an investigation into allegations of an act or omission by the member that would, if proven, have caused the employer to terminate the member's employment or to impose restrictions on the member's duties for reasons of professional misconduct, the employer shall file with the registrar within 30 days after the resignation a written report stating the nature of the allegations being investigated.”

The Chair: Are the committee members ready to vote?

Mr Marchese: Yes, we're ready.

The Chair: All in favour? Opposed?

I declare this amendment carried.

We have another government motion.

Mr Dunlop: There are two more technical motions, Mr Chair.

The Chair: Under section 4?

Mr Dunlop: Yes.

Mr Kennedy: Mr Chair, I wonder if we could ask the parliamentary assistant to explain the need for the technical motions before they're put, if that wouldn't be too onerous.

Mr Dunlop: When the amendment is put in place on motion number 6, it changes the alignment of the sections in the bill.

Mr Kennedy: So both of them are just motions that will make it conform?

Mr Dunlop: Yes.

Mr Kennedy: OK.

The Chair: Thank you, Mr Kennedy. Thank you, Mr Dunlop.

Do you wish to read the motion?

Mr Dunlop: Thank you very much, Mr Chair.

I move that subsection 43.2(3) of the Ontario College of Teachers Act, 1996, as set out in section 4 of the bill, be amended by striking out "subsection (1) or (2)" and substituting "subsections (1), (2) or (2.1)".

The Chair: Are the members ready to vote?

All those in favour? Those opposed? I declare this amendment carried.

We have another amendment to section 4.

Mr Dunlop: No, the next one would be in section 6.

The Chair: Oh, I'm sorry. All right.

Shall section 4, as amended, carry? Carried.

Section 5: I see no amendments. Shall section 5 carry? Carried.

We turn to section 6.

Mr Dunlop: I have an amendment, Mr Chair.

I move that section 48.1 of the Ontario College of Teachers Act, 1996, as set out in section 6 of the bill, be amended by striking out "subsection 43.2(1) or (2)" and substituting "subsection 43.2(1), (2) or (2.1)".

The Chair: Are the members ready to vote?

Shall this amendment carry? Those opposed? I declare this amendment carried.

Shall section 6, as amended, carry? Carried.

Section 7: no amendments. Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9, the short title, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 101, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? I will so do.

That concludes the two orders of business for today. We're adjourned.

The committee adjourned at 1728.

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