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**Official Report
of Debates
(Hansard)**

Thursday 28 November 2002

**Journal
des débats
(Hansard)**

Jeudi 28 novembre 2002

**Standing committee on
public accounts**

Audit Amendment Act, 2002

**Comité permanent des
comptes publics**

**Loi de 2002 modifiant la loi
sur la vérification
des comptes publics**

Chair: John Gerretsen
Clerk: Anne Stokes

Président : John Gerretsen
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
PUBLIC ACCOUNTS**

**COMITÉ PERMANENT DES
COMPTES PUBLICS**

Thursday 28 November 2002

Jeudi 28 novembre 2002

The committee met at 1002 in committee room 1.

**AUDIT AMENDMENT ACT, 2002
LOI DE 2002 MODIFIANT LA LOI
SUR LA VÉRIFICATION
DES COMPTES PUBLICS**

Consideration of Bill 5, An Act to amend the Audit Act to insure greater accountability of hospitals, universities and colleges, municipalities and other organizations which receive grants or other transfer payments from the government or agencies of the Crown / Projet de loi 5, Loi modifiant la Loi sur la vérification des comptes publics afin d'assurer une responsabilité accrue de la part des hôpitaux, des universités et collèges, des municipalités et d'autres organisations qui reçoivent des subventions ou d'autres paiements de transfert du gouvernement ou d'organismes de la Couronne.

The Chair (Mr John Gerretsen): I'd like to open the meeting to deal with clause-by-clause consideration of Bill 5, the Audit Amendment Act. Since I obviously will not be able to act as Chair for this, I would request—

Mr Richard Patten (Ottawa Centre): Do we have a report from the subcommittee?

The Chair: Can we deal with that after, please?

Mr Patten: Sure.

The Chair: Could I have a motion appointing an acting chair?

Ms Caroline Di Cocco (Sarnia-Lambton): I move we appoint Richard Patten as acting chair.

The Chair: Are there any further nominations? All in favour? Opposed? Carried.

The Acting Chair (Mr Richard Patten): As we get into Bill 5, there was a handout. Each member received one that looks like this, which replaces number 23 in the package you have on the bill. It's outlined 23 near the back of your package. Do you all have that?

Mr AL McDonald (Nipissing): Sorry. Which part, Chair?

The Acting Chair: This was handed out. Do you have a copy, John? It's motion 23 at the back. This replaces it when we get to it. It's a pretty big bill, very substantive.

Mr John Gerretsen (Kingston and the Islands): Could I make some opening comments, Mr Chair?

The Acting Chair: Yes, absolutely.

Mr Gerretsen: The comments deal with the amendments. The bill was unanimously approved and given

second reading in the House. I know that some of the amendments—I'll put this right upfront—strictly speaking may not be in proper form as far as the usual procedure is concerned, from information I've received from the clerk's office and from various other people as well. They can only be passed by unanimous consent. They deal basically with renaming the Provincial Auditor's office and naming it "Auditor General," which would be in line with other provincial auditors' offices throughout the country. I believe they're all named "Auditor General" now in the individual provinces except for Ontario.

These amendments, the way I understand it, are not, strictly speaking, proper to the extent that the subsections they deal with in the bill were not reopened by my amended bill. To speed the process along, if there isn't unanimous consent to change the name of the office from "Provincial Auditor" to "Auditor General," then I'm prepared to withdraw those. I would like to see them in because I think it would bring the bill more in line with what's happening in other provinces. On the other hand, I realize that unless there is unanimous consent, as far as the clerk's office is concerned, these amendments would not, strictly speaking, be in order.

I'm just putting that right upfront so that everybody knows what we're talking about. I would say probably about 18 of the 23 amendments I've proposed deal with items along that line.

The Acting Chair: Thank you. Actually, the very first motion deals with what you've identified. You're correct. I'm advised by the clerk that I should ask you to move that first subsection and then we can respond to it.

1010

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

"(0.1) The definition of 'assistant auditor' in section 1 of the Audit Act is repealed and the following substituted:

"'deputy auditor' means the Deputy Auditor General;"

The Acting Chair: I have to notify you that this is considered to be out of order unless there is unanimous consent to consider this.

Mr Gerretsen: I would request there be unanimous consent for this amendment.

The Acting Chair: Do we have unanimous consent?

Mr McDonald: Chair, maybe I could ask the Provincial Auditor for his thoughts.

Mr Erik Peters: “Auditor General” is the generic term. It is now used across the board in Canada with one other exception, and that is Saskatchewan. Saskatchewan and Ontario are the only jurisdictions where it is called “Provincial Auditor.” The reason is that there is a direct linkage actually to the intent of the legislation that is before you, because up to now my office could not do proper value-for-money audits of the broader public sector, like of the sector we are talking about. So there is a logical linkage to the name change, from just auditing ministries to auditing the broader public sector. There is a logical linkage in changing the name of the office to Auditor General to indicate the broader scope, and that broader scope is also implied in many other jurisdictions. They have this audit right already, and possibly that’s why the name Auditor General was chosen in that. So there’s a logical linkage to the bill itself; although it may be technically out of order, there is a legislative linkage that can be clearly established.

It’s certainly overall a motion we would support, because so frequently in our meetings I would say that easily up to half of the correspondence to my office from the public is addressed to the Auditor General of Ontario. It would simply institute or put into law what is a good part of law making, which is to put a practice that is out there into the legislation.

Mr McDonald: So just changing the term or your name gives you expanded power? Is that what you just said?

Mr Peters: Not expanded power, expanded domain. In other words, we can do financial audits of all these public sector entities right now, but the bill is intended to allow us to have access to all the information necessary to do value-for-money audits of broader public sector entities. Most of these, as you know, are close to 100% funded by the province. There’s a declining percentage of funding going to the universities out of their overall revenue stream. A percentage, in some universities as low as 40%, is coming from the government. But in other organizations, such as hospitals and school boards, the funding comes pretty well 100% from the province.

It would really give the Legislative Assembly, through my office, the right of access and the right of knowing whether these organizations are actually prudently administering the funds they are receiving from the provincial government and for the purposes intended.

Mr McDonald: So this would bring more accountability?

Mr Peters: That’s right. It would certainly improve overall accountability in the province, and the name change would support that.

Ms Di Cocco: Just on that whole notion of accountability, I remember, in one specific experience a few years ago, trying to get—and it’s a case in point that would support unanimous consent for this. When we requested that the government at the time see if the Provincial Auditor could take a look at some questionable practices of one of the local school boards—it ended up coming through at an inquiry—we were told that the

Provincial Auditor couldn’t do that, couldn’t come and overview that. At that time I wished, as a citizen, that there was some mechanism that would allow him to at least look objectively at how some of those dollars were being spent at that time. It didn’t happen because he didn’t have the authority to do that.

Mr John Hastings (Etobicoke North): The OHA has presented a letter regarding the Audit Amendment Act, and it outlines several levels of accountability already, including audited financial statements to the board, even if they’re by outside auditors, which are submitted to MOH. You have the hospital accreditation exercise. I see in their letter, on page 2, “up to 10,000 pieces of information.”

What I’m not clear on is, if you had this amended act go out of this committee, regarding hospitals, would you say, first, that you wouldn’t agree with the substance of their letter, in terms of the levels of accountability; and second, that your office needs to have the authority to go in and audit all the programs at a given hospital, and there’s no duplication in either of those exercises? Finally, I’ve been on this committee for a number of years, and throughout those years you have always made the observation that you need more resources to do what you had already been assigned. So I assume that if this Audit Amendment Act went through, you would require more resources to undertake the broadened mandate of your office to audit these organizations that you already don’t have any purview over, except maybe getting information from. Your comments, please?

Mr Peters: I understand all three questions. Certainly, the hospital association has objected to audit and transparency to the Legislative Assembly all along. The fact we have to look at is that none of the mechanisms described in that letter and in the previous presentations provide for accountability of hospitals to the Legislature. That mechanism would be established through my office.

Certainly, I acknowledge that there are a number of accountability steps that have been taken in the hospital sector. They would certainly be taken into account in dealing with the depth of the audit, and we would look at it. For example, the hospital report card is quite a valid initiative, although hospital people are telling me there are some concerns; for example, they are unable to assess the state of the art of the equipment, of the capital facilities, being used in a hospital, and I think the hospital association is aware of this. They are considering their report card; it’s a work in progress. But we would take all accountability mechanisms into account when we do our audits.

In fact, in our audits of the hospital sector, which we have done at the ministry level only—for example, you mentioned accreditation; we have always been very active in asking the ministries to use the accreditation process as part of their assessment process of the way they fund hospitals. But I do not consider this in any way redundant, or the initiatives taken by the Ontario Hospital Association as making an audit by my office, as an office of the Legislature, redundant. It simply enhances the

accountability of the hospital sector to the Legislature itself, remembering that we're spending \$7 billion-plus a year on the hospitals. I think the Legislature is entitled to know whether they are achieving value for money. That speaks to the point about hospitals.

You also raised a point about resources. When we discussed this previously, in 1996, we made a statement that we would be able to deal with these kinds of audits with the resources we had then. I should remind you, though, that since 1996, the resources of my office have been cut. I'll also put the Board of Internal Economy on notice—I said, actually, a year ago—that over the next three years I would like to restore the funding of my office to the 1996 level. Actually, what I would like to do—I think we can make do with that level of funding, but I should point out to you that my office has been reduced in funding since 1990 from a level of 115 staff members to about 85 now. That is just not acceptable in the overall context, in any context, because we are the least funded office in Canada. I should point out to you that we are receiving about 14 cents per thousand dollars of government spending, which compares to the federal, which is the next-leanest office, at about—

The Acting Chair: I'm sorry, I'm going to have to intervene as Chair. This is really outside of this scope. It is interesting, and I think we've talked about it before, but if you could respond to the third question that he asked. Then Mr Gerretsen wants to say something.

1020

Mr Peters: Yes. That was a resource question. I want to respond to that. I just wanted to put on the record that, for example, we are funded at 14 cents per \$1,000, compared to the federal, which is the nearest, at about 35 cents per \$1,000. Alberta, for example, has been at about 74 cents per \$1,000 of government spending. So we are way at the bottom of the heap in spending. Even if we get the additional spending we have asked for over the next three years, we will still only be at 15 cents, or less than half the spending in relation to the spending of the federal government and of any other office in Canada. Just as a comparison, my staff level right now is close to 85, 87. Quebec, which is the nearest province in size, has a staff of 240.

Mr Gerretsen: I wonder if I could just address a couple of issues. The whole purpose of my bill, you may recall, was to give the auditor a greater ability to follow the money. So the name changes are to ensure that as a provincial auditor he doesn't audit only the province's books but that he also has the ability to audit the books, in effect, of the people who receive the transfer money.

The reason we didn't have public hearings is that basically this bill is very much like the bill that was introduced in 1996. There were extensive public hearings. I think it's fair to say that most of the transfer recipients didn't like the fact that there was greater accountability.

Interjection: Mr Maves's bill.

Mr Gerretsen: That's right. Mr Maves's bill, absolutely. I'll give him full credit for that; no question about it.

All the accountability mechanisms that are referred to in the Ontario Hospital Association deal with the hospitals being accountable to the government. It doesn't deal at all with the hospitals being accountable to the Provincial Auditor. That's the major difference. I suppose that from their viewpoint, and it's the same with the university associations etc, the fewer organizations they have to be accountable to, maybe the better it is. But that's the whole purpose of the bill, to deal with the ability to audit where the money goes.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I think it's a good idea. I think that close scrutiny is very important. I'm not sure what the mechanism should be. I'll cite the example of Mr Rosen going in and finding out that there is perhaps \$95 million which might have been wasted on things that were not essential. So in this case, we have to look at whether the health care delivery is where the money is being spent or whether it is somewhere else. So I'm all in favour of closer scrutiny. We'll have to work out the mechanism.

Mr Hastings: Since we're discussing this act and the thrust of it, John—

The Acting Chair: We actually have a motion that has been placed before us.

Mr Hastings: Dealing with the Audit Amendment Act.

What I would like to know, either from the auditor or from Mr Gerretsen, is whether the OHA, to use an example—I'm just raising the point because I think it was brought up before, but I'm seeing it in a different light—says they do undertake audited financial statements under the Corporations Act, because they're public corporations. So if they're doing that, and no CA firm is going to sign at the bottom, under generally accepted accounting principles, unless the numbers line up and there are notes made about what they owe and that kind of stuff, how does your bill enhance accountability and not produce duplication? It seems to me that if you're going to have a financial audit, OK, I don't care whom it's done by. What I'm interested in, if I'm a member of a hospital board, which I was, is whether we have the right numbers. We know where we're going financially. In this instance, are we going to end up with an audited financial statement to a given hospital board, and they pay their Cas? Because that's what is required under the Corporations Act, and if this bill goes through, you can go in and then do an audit of the books again. Or will you take the material of the audited financial statement from that given hospital, where the CAs in a firm signed and said, "This is the shape of this operation in this hospital"—it's not in good shape, whatever the numbers are. How are we going to prevent the duplication?

Mr Peters: The duplication is already prevented. Under my act, currently, I can do financial audits of hospitals. I'm not doing them because I consider it a waste of taxpayers' money if we have to pay a private sector firm and then my office does it again.

What this act does is, it allows us to do so-called value-for-money audits of hospital operations and com-

pliance audits of the legislation, which the private sector firm is not doing.

Mr Hastings: Which is only a financial number.

Mr Peters: They are just doing the financial numbers. They can tell you whether the financial statements of a hospital, and I've been on a board myself, present fairly. But they cannot tell you whether the emergency ward is working efficiently and where it's achieving value for money from the \$7 billion that we are transferring to the hospital sector. Hospitals cannot afford to fund and do that. We can do it under our mandate, particularly because we also have the skill set that can do it.

I'm offering you, really, a minimal increase in the funding level of my office. It doesn't mean that we can do 180 hospitals in a year. It means that maybe we can do one, and one big one. We will have to be very judicious and do a risk analysis as to whether to do the audit. This act gives the Legislature essentially an insight into whether or not the hospitals are spending their money prudently and for the purposes intended, and whether the colleges and school boards are doing the same etc. That is the mandate that is actually sought in this legislation. We would not duplicate the financial audits.

Mr Hastings: Mr Gerretsen, then, or to yourself: if we're going to go that road, which I don't have a problem with per se, does the bill then allow for the audit of public hospital foundations? A large number of hospitals, actually small hospitals too, now have foundations for raising dollars, which have to be audited under the foundations and charities legislation.

Mr Gerretsen: Presumably not the foundations, unless they are a grant recipient and get money from the government toward the foundation. But foundations, generally speaking, by their very nature get money from other organizations or individuals—so not the foundations as such; only those areas where they're getting direct money from the government in one way or another.

I totally agree with the auditor. My main purpose for bringing this act forward was to get to the value-for-money type of situation that he annually reports on. Right now we can only report on those situations where there are actually ministries or crown corporations—not even crown corporations. Let's just talk about the ministries. This allows them to take it one step further and, if need be, do it with respect to school boards, colleges, universities, hospitals or any grant recipient.

I would think that his office would be very judicious, because this was brought up during the discussion of this bill when it was debated on second reading. He's not going to audit an organization that may get a hundred bucks from the government, I wouldn't think. Obviously, he's mainly going to be involved in those situations where there are significant transfers of money. About 60% of our provincial budget is being directly transferred to other organizations.

Mr Hastings: OK. Can I make one further comment? On your list, John, one that's missed, and there may be others: under economic development or the tourism

industry, the Toronto Convention and Visitors Bureau is missed. I suspect there are probably similar ones throughout Ontario which aren't included on your list that have had, maybe not getting recently, grants, either capital or operating, in the last few years. I wouldn't have that information. Kingston probably has a convention and visitors' bureau. When it started up, it probably got some monies for the bricks and mortar; maybe not now. I don't know. Do you think they should be included?

1030

Mr Gerretsen: Just so that you understand those lists, this all gets back to the amendment that's currently before you: to change the name of the Provincial Auditor to Auditor General. That has certain implications in other acts. What the legislative counsel did was go to the other acts where the name "Provincial Auditor" is mentioned and basically said, "If you want to be consistent and if this amendment passes, then the names have to be changed in these other acts." He's only dealing with those acts where the Provincial Auditor is mentioned, not with respect to any other acts where his name isn't mentioned. That's a whole different argument that you're bringing forward.

Mr Hastings: It's consistent with, if we're going in that direction—there has to be legislation in the past that created these convention and visitor bureaus, or whatever they're now called: "Toronto" something. They have different names. They had monies given to them for their construction. That's in the past. All I'd like to know—I don't need to know now—is whether the act that governs the monies flowing to those organizations in the past or present—when they do the list, they should probably be included if "Provincial Auditor" was in the act. Would you know that, Erik?

Mr Peters: That is left to the legislative researcher. If "Provincial Auditor" was mentioned in the act, then it's probably listed on the schedule that you have just received.

If I may make one additional comment, the intention of the act is that my office can follow taxpayers' money right to the grant recipient. So if the organization that Mr Hastings mentioned is a grant recipient in a significant way, then we can follow the money. That's what the legislation is structured to do: that we can follow the money right through to assure the taxpayer, give a reasonable assurance, that the money is used for the purposes intended and wisely, even by those organizations if they receive subsequent drafts.

Mr Hastings: Right, OK.

Mr Peters: The same with foundations. If a foundation, for example, is self-funding and normally has a financial audit, there is no value in a value-for-money audit and we wouldn't do it. If the foundation receives substantial money from the province, then we may want to take a look at it, if they receive it directly.

Mr Hastings: I don't think any foundations get money except on that dollar-for-dollar matching deal that was around a few years ago. Where you have a foundation contributing \$1 million or \$8 million to a specific

capital upgrade or new equipment in a hospital, then there's a transfer of that money to the hospital's corporation. Does that mean, where you went in and did an audit where a hospital foundation had flowed money across for capital, as an example, you would then do an audit of the foundation?

Mr Peters: No, we most likely would rely on the financial audit of the foundation that is already carried out. If we, for example, were to find that a foundation spends extraordinary amounts of money to raise funds and that money is provided by the hospital, we would certainly have an interest in that. We would take a look at the way the hospital funds the foundation.

Ms Di Cocco: I think it's important that we don't lose sight of the fundamental premise of what changes this act does. We can't assume that—and I believe the auditor said so—private audits don't apply sometimes to the value for money. It's about following public dollars and it's about real accountability when it comes to the dollars that are spent that are taxpayers' dollars. Public corporations, and I believe hospitals are one of them, that act more like private companies because they don't have any, unlike municipalities, etc—they have not even a transparency aspect in how they conduct business. It's up to them as individuals or as individual entities. So I would suggest that we move forward and certainly support the change, because I believe it really is time, and it is about real accountability. I fundamentally believe that.

Mr Gill: I'm just curious whether this will extend to the value-for-money audit for the so-called SuperBuild-type corporations like Harbourfront, where there are matching funds from provincial, municipal, federal. It's substantial money we're looking at.

Mr Peters: It already does, actually, because the fact is that we have just been appointed the auditors of SuperBuild, and once my office is appointed as the auditor of the organization, the full content of the Audit Act as it exists applies to it. So that is already done. It would be independent of this bill.

Mr Gill: OK.

Mr McDonald: I'm going to support this amendment. Maybe I can be the first to ask the Auditor General one question: do you have any concerns that the public sector partners might not have the resources to accommodate these value-for-money audits? Do you have any concerns at all?

Mr Peters: You mean the partners that the government has with it, that we do value-for-money? Well, to begin with, we will be very judicious in this. I would not propose that we do a value-for-money of General Motors Canada because they are receiving a \$10,000 grant for apprentices, to use an extreme example. But also, in the value-for-money aspect we will be very judicious in assessing whether the audit itself provides value for money. Part of our approach is that we don't want to spend taxpayers' dollars on auditing when there is no benefit to the taxpayer. So we take a very judicious approach, a risk-analysis approach, to doing this, and I

can give you the assurance that we won't do frivolous audits. For example, it could be realistic that the government itself would—let me step back for a moment. The funding of my office is entirely from the Legislature to do our work, through the Board of Internal Economy, so there would be no cost to the private sector for us to do—

Mr McDonald: The public sector, I said.

Mr Peters: —the public sector to do this audit, except for the amount of potential increase restoring us. In 1996, when this came up to a vote, I gave this committee assurance that we would not increase the funding, but what I'm saying is that I would like to get back to that level of 1996, because I can't accommodate it with the current level. But I'm talking about maybe \$1 million over two years, which would be still a fairly insignificant amount of money, particularly in the amount of payback we have achieved for the taxpayer. In the 10 years that I've been in office, I can say that we have earned for the taxpayer, if our recommendations are implemented, at least half a billion dollars, and that is quite a good payback.

Mr McDonald: Is there a dollar figure attached to what you do per audit? If you go in and audit, let's say—we'll use the \$10,000 grant to General Motors as an example. When you finish your audit, do we know how much it cost for you to do that audit?

Mr Peters: The individual audit?

Mr McDonald: Yes. Would you attach a dollar value to it so that the public sees what it cost to do that audit?

Mr Peters: We do it internally, and we certainly would be accountable for it to the Board of Internal Economy if they asked for the information. But there is no mechanism in place under which we publish these amounts.

Mr McDonald: Do you think it might be appropriate that we do that?

Mr Peters: Yes and no. The concern about it would be that it could affect the independence of my office. If somebody says to us, "In two weeks, go in and do, for \$10,000, what you can do," that would certainly be a scope inhibitor. It would not allow us to carry out the scope of the audit we would like to do. We do our audits based on the risk assessment and we do that internally, but that is done to safeguard the independence of my office.

1040

Mr McDonald: There would be nobody telling you what scope to do, but at the end of your investigation, if you went in and did an investigation you thought was appropriate, do we know or is there some mechanism so we know that, "Yes, we went and did that audit and this is what it has cost the taxpayers for that individual audit"?

Mr Peters: Yes, you can get that. For example, this committee could ask for it and we would probably provide the information.

The Acting Chair: Can I remind the committee that we have on the floor a request by the mover, Mr Gerretsen, for unanimous consent to deal with this name

change. That's still on the floor. I would ask you to consider that. On the advice of the clerk, I had moved that this was out of the scope; however, with unanimous consent, you can move ahead to look at the name change and to address the first motion.

Mr Gerretsen: To follow up on that, if that is carried, there are about 15 other simple name changes. I assume the unanimous consent will apply to those situations as well, or we can deal with them as we go along, because it wouldn't make any sense to have it in one case and not in other cases where the name basically follows.

I should also indicate that Ms Martel indicated to me that she would not be here until about 11 o'clock because they're dealing with the Romanow report, but she concurs with the amendments as proposed. She indicated that to me earlier.

Mr McDonald: Chair, we're fine with that.

The Acting Chair: OK. So I take it we have unanimous consent to move ahead.

Mr Gerretsen: I believe I have moved the first amendment.

The Acting Chair: The first is for section 1:

“(0.1) The definition of ‘assistant auditor’ in section 1 of the Audit Act is repealed and the following is substituted:

“‘deputy auditor’ means the Deputy Auditor General;”

All in favour? Agreed.

Mr Gerretsen: The second amendment is not in that same category. This is actually a change to the proposed act.

I move that the definition of “grant recipient” in section 1 of the Audit Act, as set out in subsection 1(2) of the bill, be struck out and the following substituted:

“‘grant recipient’ means an association, authority, board, commission, corporation, council, foundation, institution, organization or other body that receives, directly or indirectly, a payment in the form of a grant or other transfer payment from Ontario, an agency of the crown or a crown controlled corporation; (‘bénéficiaire d’une subvention’)”

The main change, if I might just address it, is that the words “directly or indirectly” have been included in the definition. This was at the suggestion of legislative counsel.

The Acting Chair: Any discussion on this? I will call the vote. All in favour? The section is passed.

Mr Gerretsen: Amendment number 3 deals with this definition situation again, so it's much like number 1.

I move that section 1 of the bill be amended by adding the following subsection:

“(3) The definitions of ‘auditor’ and ‘Office of the Auditor’ in section 1 of the act are repealed and the following substituted:

“‘auditor’ means the Auditor General;

“‘office of the auditor’ means the Office of the Auditor General;”

The Acting Chair: Any discussion or comment? All in favour? Passed.

Mr Gerretsen: The fewer members, the more cooperative we get.

The Acting Chair: We now have to carry section 1, as amended.

Mr Gerretsen: I move it.

The Acting Chair: Shall section 1, as amended, carry? Carried.

Mr McDonald: Mr Chair, we support all these amendments. Maybe Mr Gerretsen has to read them all out for the record but he doesn't need to go into detail if it's not necessary.

Mr Gerretsen: I'll just read them into the record then.

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

“1.1 The act is amended by adding the following section:

“References to former names

“1.1 A reference in an act, regulation, order in council or document to a person or office by the former title of that person or the former name of that office set out in column 1 of the following table or by a shortened version of that title or name shall be deemed, unless a contrary intention appears, to be a reference to the new title of that person or the new name of that office set out in column 2:

“Column 1: Former titles and names

“Assistant Provincial Auditor

“Office of the Provincial Auditor

“Provincial Auditor

“Column 2: New titles and names

“Deputy Auditor General

“Office of the Auditor General

“Auditor General.”

I so move.

The Acting Chair: Shall section 1.1 carry? All in favour? Good.

Mr Gerretsen: I move that the bill be amended—this is number 5—by adding the following section:

“1.2 Section 2 of the act is repealed and the following substituted:

“Office of the auditor

“2. The Office of the Auditor General shall consist of the auditor, the deputy auditor and such employees as the Auditor General may require for the proper conduct of the business of the office.”

The Acting Chair: Comments? Shall section 1.2 carry? All in favour? Fine.

Mr Gerretsen: Section 1.3 of the bill:

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

“1.3 The following provisions of the act are amended by striking out ‘assistant auditor’ wherever that expression occurs and substituting in each case ‘deputy auditor’:

“1. Section 6.

“2. Section 7.

“3. Section 8.”

The Acting Chair: Comments? All in favour? Shall section 1.3 carry? Carried.

Mr Gerretsen: Section 2 of the bill, subsection 10(2) of the Audit Act:

I move that subsection 10(2) of the Audit Act, as set out in section 2 of the bill, be amended by striking out “needs to perform duties under this act” at the end and substituting “considers necessary to perform duties under this act.”

The Acting Chair: Comments?

Mr Gerretsen: That’s again at the suggestion of legislative counsel.

The Acting Chair: OK. All in favour? Passed.

Mr Gerretsen: Motion number 8: section 2 of the bill, subsections 10(3) and 10(4) of the Audit Act:

I move that section 10 of the Audit Act, as set out in section 2 of the bill, be amended by adding the following subsections:

“No obstruction of auditor

“(3) No person shall obstruct the auditor or a member of the office of the auditor in the performance of an audit or conceal or destroy any books, papers, documents or things relevant to the subject matter of the audit.

“Offence

“(4) Every grant recipient who knowingly contravenes subsection (3) and, if the grant recipient is a corporation, every director and officer of the corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to,

“(a) a fine of not more than \$2,000 or imprisonment for a term of not more than one year, or both, if the person is not a corporation; or

“(b) a fine of not more than \$25,000, if the person is a corporation.”

Just by way of explanation, basically what’s happened is that the suggestion was made that two of the subsections under the current section 13 of the act were moved into this section, where they make more sense.

The Acting Chair: Those in favour? All right, this is passed.

Shall section 2, as amended, carry? Carried. All right.

We’re now moving to section 2.1.

Mr Gerretsen: “2.1 The act is amended by adding the following section:

“Accommodation in grant recipient

“11.1 For the purposes of exercising powers or performing duties under this act, the auditor may station one or more members of the office of the auditor in a grant recipient and the grant recipient shall provide the accommodation required for the purposes of this section.”

This is in there because I understand there have been situations where sometimes the auditor hasn’t been given the proper room in order to conduct his audit in the places where it’s to take place.

1050

The Acting Chair: Comments? All in favour? Carried.

Shall section 2.1, as amended, carry? All in favour? OK, passed.

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

“2.2 Clause 12(2)(c) of the act is repealed and the following substituted:

“(c) the examination of the summary financial statements of Ontario as reported in the public accounts and shall express an opinion as to whether the summary financial statements of Ontario as reported in the public accounts are presented fairly in accordance with appropriate accounting principles as recommended for governments by the Canadian Institute of Chartered Accountants;”

The Acting Chair: Procedurally, I have to notify you that this, because it is beyond the scope of the bill, hasn’t been opened in the section. The only way you can proceed with this is if you have unanimous consent.

Mr Gerretsen: I would request unanimous consent.

The Acting Chair: Do we have unanimous consent? All right. You may proceed, Mr Gerretsen.

Mr Gerretsen: I move that what I said already be adopted.

The Acting Chair: Comment on that? All in favour of section 2.2? Carried.

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

“2.2 Clause 12(2)(c) of the act is repealed and the following substituted”—oh, no, that’s not necessary. Sorry. We did that. Because 10 was passed, that’s not necessary. So we get to 12.

“2.3 Clause 12(2)(f) of the act is amended by striking out ‘agencies of the crown or crown controlled corporations’ in the portion before subclause (i) and substituting ‘agencies of the crown, crown controlled corporations or grant recipients.’”

The Acting Chair: Like the previous one, this section wasn’t opened in the bill either. In order to proceed, you’d have to have unanimous consent.

Mr Gerretsen: I’d request unanimous consent. The only words that have been added are “grant recipients.”

The Acting Chair: Do we have unanimous consent?

Mr Hastings: That covers that point about convention authorities and whatever that act is, right?

The Acting Chair: So we have unanimous consent? All right. Shall this clause carry? Carried.

Shall section 2.3, as amended, carry? Carried.

Mr Gerretsen: “3. Section 13 of the act is repealed and the following substituted:

“Audit of grant recipient

“13.(1) The auditor may audit a grant recipient to the extent that the auditor considers necessary and may require the recipient to prepare and to submit to the auditor a financial statement that sets out the details of the disposition that the recipient made of the grant or other transfer payment that it received.

“Time of receiving payment

“(2) The auditor may audit a grant recipient under subsection (1) in respect of a grant or other transfer payment that the recipient has in its possession on or after the day subsection (1) comes into force, even if the recipient received the grant or other transfer payment before subsection (1) comes into force.”

The Acting Chair: Comment?

Mr Hastings: My comment is that it goes back to the point, Erik, that we were talking about. Assuming this goes through, you'd go in and audit a hospital, one of the large public hospitals, and require the CEO or the auditors under the Corporations Act to provide you with information, material which they already would have anyway. My point is under the part that says "a financial statement that sets out the details of the disposition that the recipient made of the grant." Say the hospital down the street got \$5 million. I interpret that then to mean that they now have to prepare a separate statement just about the \$5 million—whatever the number would be—on the size of the grant and how it was disposed of, utilized etc, or would you get that already, presumably, in the financial statements audited under the Corporations Act and then you ask for clarification about the \$5 million or \$25 million, whatever it would be? How would you proceed?

Mr Peters: The operative words are really "may require." In other words, if we considered it necessary, if they had the information, we would use available information. If it is not prepared, then we may require that it be prepared, that they do at least an initial accounting to us as to how they spent the money that they received from the government.

Mr Hastings: So is your experience the same as mine, then, being on a public hospital board, you give them a pass if they've already got that? So it would be shown in their audited financial statement under the Corporations Act, and you or one of your reps would be asking for further clarification?

Mr Peters: That's right. Incidentally, that particular section—

Mr Hastings: I guess my point is, it would have been included in those old statements of the board you were on, right? They had to, right?

Mr Peters: That's right. They have no choice. Also, I just want to point out that 13(1) is no change from the existing wording in the act. That's already in. The main change is really in the time of their receiving grant payment. What it says is that if the organization has the cash still on hand, it would be subject to audit by us. For example, if you remember, about two years ago the government gave \$1 billion to the hospitals for further construction. Now, if they argued to us they got that two years ago but they still have the cash on hand, they could say we couldn't audit how they could spend it. So this section says that if you have the cash still on hand, we can audit how you spend it.

Mr Hastings: And require it back if you haven't spent it?

Mr Peters: No, that would be under the contract that the hospital signed with the government.

Mr Hastings: Because it's already going out, right?

Mr Peters: That's right.

The Acting Chair: Those in favour of this section? Carried.

Mr Gerretsen: The next one is not necessary, since motion 8 carried. So number 15, section 4 of the bill, subsection 14(1) of the Audit Act.

The Acting Speaker: OK, I have to ask, shall section 3, as amended, be carried? Carried.

Mr Gerretsen: I move that subsection 14(1) of the Audit Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Examination on oath

"(1) The auditor may examine any person on oath on any matter pertinent to the performance of the auditor's duties under this act."

Mr Hastings: What's different from what it is now?

Mr Peters: Previously, it says, "on any account that the auditor may audit," and we found that a rather archaic phrasing, so the lawyer just suggested that we clean it up a little bit.

Mr Hastings: Modernizing it, OK.

The Acting Chair: All in favour? It's passed.

Shall section 4, as amended, carry? All right, section 4 is carried.

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

"4.1 Section 20 of the Act is repealed and the following substituted:

"Staff

"20. Subject to the approval of the board and to sections 20, 25 and 26, the auditor may,

"(a) employ the professional staff and other persons that the auditor considers necessary for the efficient operation of the office of the auditor; and

"(b) determine the salaries and the terms and conditions of employment of the deputy auditor and the other employees of the office of the auditor."

I move unanimous consent that this matter be included in the bill since that particular section was not opened up.

The Acting Chair: That's right, so in order to proceed with this I have to say it is out of order, because the act isn't opened up in the bill. However, you can proceed under unanimous consent.

Mr Gerretsen: I request unanimous consent.

Mr Hastings: What's "board" here? Board of Internal Economy?

Mr Peters: Board of Internal Economy.

Mr Hastings: That's what I thought it meant.

The Acting Speaker: OK. This is moved by Mr Gerretsen. Comment? All in favour? OK.

Mr Hastings: My suggestion would be that it should be named.

The Acting Speaker: All right. Passed.

Mr Hastings: Mr Chairman?

The Acting Speaker: I'm sorry.

Mr Hastings: Just a moot point, I guess: section 20 should have the actual name of the board in there.

Mr Gerretsen: Well, the board's name is actually included in the act.

Mr Hastings: In the first section?

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Mr Peters: Yes, it's defined in section 1.

Mr Gerretsen: In the existing Audit Act it says “‘board’ means the Board of Internal Economy.”

The Acting Chair: Did I get that carried, section 4.1? OK.

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

“4.2 Clause 21(1)(a) of the act is amended by striking out ‘Provincial Auditor’ and substituting ‘Auditor General.’”

That’s in line with our earlier—

The Acting Chair: You’d need unanimous consent. Agreed? OK. All in favour? Passed.

Shall section 4.2, as amended, carry? Carried.

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

“4.3 Subsections 22(1) and (2) of the act are amended by striking out ‘assistant auditor’ wherever that expression occurs and substituting in each case ‘deputy auditor.’”

The Acting Chair: You require unanimous consent.

Mr Gerretsen: I request unanimous consent.

The Acting Chair: OK. Any comment? Those in favour? Carried.

Shall section 4.3, as amended, carry? Carried.

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

“4.4 Section 26 of the act is repealed and the following substituted:

“Conduct and discipline

“26(1) The auditor may make orders and rules for the conduct of the internal business of the office of the auditor and, subject to this section, may for cause suspend, demote or dismiss an employee of the office of the auditor or may release an employee of the office of the auditor.

“Application of Public Service Act

“(2) The provisions of the Public Service Act and the regulations made under it that apply where a deputy minister exercises powers under section 22 of that act, except the requirement for a deputy minister to give notice to or to obtain the approval of the Civil Service Commission, apply with necessary modifications, as if the auditor were a deputy minister, where the auditor for cause suspends, demotes or dismisses an employee of the office of the auditor or releases an employee of the office of the auditor.

“Grievances

“(3) An employee whom the auditor for cause suspends, demotes or dismisses may file a grievance with respect to the auditor’s decision.

“Application of Public Service Act

“(4) The provisions of the regulations made under the Public Service Act that apply in relation to a grievance mentioned in those regulations apply with necessary modifications to a grievance mentioned in subsection (3) as if the auditor were a deputy minister.”

The Acting Chair: You require unanimous consent for this.

Mr Gerretsen: I request unanimous consent.

The Acting Chair: OK? Agreed. Any comment on this motion? All in favour. Passed.

Shall section 4.4, as amended, carry? Carried.

Mr Gerretsen: I move that section 5 of the bill be struck out and the following substituted:

“5(1) Subsection 27(1) of the act is amended by striking out ‘assistant auditor’ and substituting ‘deputy auditor.’

“(2) Subsection 27(2) of the act is repealed.”

I request unanimous consent.

The Acting Chair: All right. Mr Gerretsen moved a section 5 amendment. Shall the amendment pass? All in favour? OK, passed.

Shall section 5, as amended, carry? Carried.

Mr Gerretsen: Section 6 of the bill, subsection 27.1(1) of the Audit Act:

I move that subsection 27.1(1) of the Audit Act, as set out in section 6 of the bill, be amended by striking out ‘assistant auditor’ and substituting ‘deputy auditor.’”

Again, I request the unanimous consent.

The Acting Chair: All right. Do we have unanimous consent? All right. Comments on the motion? All in favour? Passed.

Mr Gerretsen: I moved that subsections 27.1(2) and (3) of the Audit Act, as set out in section 6 of the bill, be struck out and the following substituted:

“Personal information

“(2) No person shall collect or retain personal information on behalf of the auditor unless the auditor determines that it is necessary for the proper administration of this act or a proceeding under it.

“Retention of information

“(3) If the auditor retains information relating to the medical, psychiatric or physiological history of an individual or relating to an individual’s health care or well-being, the auditor shall,

“(a) remove all references in the information to the name of the individual and any other identifying information;

“(b) retain the information by using a system of identification that does not disclose the name of the individual or any identifying information referred to in clause (a);

“(c) ensure that the information is not,

“(i) disclosed to any person who is not authorized to have access to the information,

“(ii) used or disclosed for any purpose not directly related to the auditor’s duties under this act,

“(iii) published or distributed in any manner that would allow the identity of the individual to whom the information relates to be ascertained or inferred, and

“(iv) combined, linked or matched with any other information if the result could be the identification of the individual to whom the information relates, unless the combining, linking or matching is necessary, in the opinion of the auditor, in order for the auditor to perform his or her duties under this act.

“Definition

“(4) In this section,

“personal information” means personal information within the meaning of the Freedom of Information and Protection of Privacy Act.”

This replaces 27.1, on the advice of legal counsel, to bring it more into conformity with the Freedom of Information and Protection of Privacy Act.

The Acting Chair: Comments?

Mr Hastings: You’re going to find all kinds of data on the notes of physicians and psychiatrists that are in the patient data file of a patient treated under the OHIP act, and that stuff I understand can be cracked pretty easily by some of the best people.

I just had a chat with a psychiatrist regarding this. He had a fellow psychiatrist who was given computers from Washington crack his own database on the information. There’s all kinds of stuff in there about whoever’s being counselled about whatever. This is very explosive stuff.

I know it says what it says, John, but the privacy commissioner should probably be looking at the vulnerability of data on everybody in the OHIP servers. You’re now going to get this capacity under this act to see that information, especially with the medical compliance people from MOH, as to whether a psychiatrist has billed for the right number of hours—very explosive.

Mr Gerretsen: Could I just make a comment on that? Currently, in the existing act, there’s no reference to the freedom of information act at all. What my original bill did was mention the freedom of information act to deal precisely with the issue that you’re dealing with. What legislative counsel has done is flesh it out a little better, if my understanding is correct.

Mr Peters: What has happened is that when we originally had hearings on this in 1996, I specifically asked if the privacy commissioner could appear before the committee to deal with this. Their lawyers had actually drafted a section at that time. The section has been updated within the last month or so by the privacy commissioner, at our request. So what you see here before you has been drafted by the privacy commissioner of Ontario.

Mr Hastings: What does it mean practically, though? You’d go in, or one of your office reps, auditors, goes in and looks at a group of psychiatrists in a practice—it could be any type of doctor or health care practitioner. As I understand it, all the identifiers, the personal data—because doctors are now very fearful about not being in compliance on the capping, they make notes when they’re diagnosing somebody, especially when they’re counselling as a psychiatrist. That data, I assume, is just there when you go to look at a group of practices or ones associated with a hospital, all those interrelationships.

It says what it says in the act, but I’ll lay you a dollar to a doughnut there isn’t any way they can separate out the personal data of the number of billable hours a psychiatrist gave in counselling to people. The medical compliance group in MOH gets this information, the raw data. They want to know, “Did you actually do what you said you did when you billed for those hours?” So if they see it, I don’t see why one of your office people wouldn’t

see it. There’s not a way right now to separate out the data that says, “Yes, psychiatrist A did the billable hours,” but you don’t see the patient files or the comments about said patient, whoever that person is. We don’t have any way, from what I’m told. I could be wrong. I think it’s a very interesting issue that you might want to look at very carefully, Erik, as you get this authority under this bill, probably, later.

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Mr Peters: I can promise you due care, but I also want to make the point that this has been very carefully vetted by the privacy commissioner and by their legal counsel. That’s why we took special care with this amendment, that this was totally cleared. It also pertains to information that we retain in our files. I think the likelihood of us putting medical records into our working papers is fairly unlikely.

Mr McDonald: I share Mr Hastings’s concern on this as well. I guess I’m just a little concerned, Mr Peters, that you said, “Not very likely.” That’s not, to me, a very strong reassurance that this won’t happen. Having said that, I’m inclined not to support this part of the motion. I do have some concerns on it as well.

The Chair: Do you think you want to comment on that?

Mr Peters: If I may: when I said “likely,” I can give you the assurance that we won’t carry it forward. What this section really says is that we can access the record. For example, if a hospital says, “We performed an appendectomy,” we can look at the patient’s file to see that they actually did an appendectomy, but it does not mean that we pull each personal file into our working papers. There’s no need. When I’m saying, “Not likely,” if we find, for example, in our review that they charged for an appendectomy and they actually did a hysterectomy, then they will probably want to know what file we looked at and which file we found this in. The hospital would want to know themselves when we discuss it with them. That’s what the likelihood is referring to. It would stay within the confines of the hospital and we would have to get agreement, as we normally do on an audit—get factual agreement. If we find the file showed a hysterectomy that actually was an appendectomy, then we would agree at ground level that they agree with the facts of the finding. We would have to do that, but once resolved, it stays out of our working papers.

Mr Jim McCarter: Maybe if I could just comment, what this is getting at is we might be looking at bulk purchasing of drugs, and in looking at that, we might see the names of patients. What this section is intended to do is that while we might see that in doing our work, we probably wouldn’t need that sort of information in our work papers. We wouldn’t put it in. If we did need that sort of detail, what this is saying is that we don’t want any individual names of patients in the work papers. You have to have a unique identifier system, like A1, A2 and A3, so that there would be nothing in our work papers which would identify any patients’ names.

Mr McDonald: I'm still inclined not to support this. I still have concerns. We might be able to get there some way, but as of right now, without taking further study of this and going through it, I think I have an obligation not to support this amendment.

Mr Gill: The auditor mentioned this misdiagnosis, malpractice or whatever you want to call it. We have different disciplining committees to look after that, whether it was a vasectomy or whatever else. I'm not sure if we need to really get there from the auditor's point of view, whether the hospital is providing the proper procedures. I know in value for money you might say, "Why not?" But I think we already have our disciplining committees who look after whether the proper medication was given or whether proper procedure was done. I think we may be getting a little too deep into something where we may not belong.

Mr Peters: I agree with you. We are aware of this, but actually, by voting against this, I really see a problem here because this section was put in to restrict our access. If this section is not in, we have unlimited access and we can use the information for audit purposes any way we like. What this section said, and what we were willing to submit ourselves to, is the restrictions imposed by this section.

So I just want to caution you that by voting against it you may achieve the opposite, because at the moment the Audit Act has absolutely no constraints on information that I can get at. In order to deal particularly with concerns raised by the hospital association, we were voluntarily putting this section in to put the necessary restrictions on my office with regard to medical records. By voting against it, you would actually vote for unrestricted access by my office; it would have the opposite effect. I would like to throw that caution out. That's why we took such great care, with this particular section, of getting the privacy commissioner involved. I'm very concerned that if you were to vote against this, it might not serve the purpose you have. I should alert you to that, in all fairness. I can live with it out, there's no doubt about it, but it would broaden the power of access to information and retention of information beyond what I believe is necessary for my office to conduct its work. This is a restrictive clause, not an enabling clause.

Mr Gerretsen: That's my understanding as well. Legislative counsel is here and maybe she's willing to address it. The whole idea of the amendment was to restrict their power, not to open it up—and I'm not sure whether legislative counsel came up with this or whether it was through the freedom of information people—so that it would actually restrict his ability to use it. I would ask if legislative counsel, who has worked on the bill with me, could address that.

Ms Catherine Macnaughton: The wording was provided by Mr Gerretsen's office. It was not created by our office.

Mr Gerretsen: But do you have any comment as to whether or not this restricts his use of the wording or the other way around?

Ms Macnaughton: There are currently no provisions in the act dealing with FOI.

The Acting Chair: What does this section do?

Ms Macnaughton: What the Provincial Auditor has indicated.

Mr Hastings: I appreciate John's efforts to deal with this issue, in terms of trying to separate out the information which has personal identifiers in it from what the auditor's new office is trying to achieve, in terms of whether the value-for-money purpose is realized.

My major reservation with it is not so much the wording as whether he would be agreeable to having us get some good IT people to look—or we can go and see how it's handled now. And does the wording in the statute give people sufficient protections against the disclosure of personal information from a technological viewpoint? That's where my doubt comes in. I'm not relying just on one anecdote. We already know what has happened before, regardless of which party was in power, regarding the disclosure of personal data. All you have to do is look at the media. The hackers seem to be able to get into anything. I think what we need to have is a little more—you won't get it ironclad, but we'd get it closer to that level or that standard by getting some of the IT people to look at this. You have a lawyer there, and we actually have some IT people who understand what we're trying to accomplish in his bill and whether it is sufficient. From a legal perspective, I presume it is, but I'm not satisfied that it is from a technological viewpoint. Usually, those two worlds don't converge; they go the other way.

I don't know how you want to handle it. I don't want this thing ending up that we don't act on it, but I want that reservation reasonably satisfied. I think having some good IT people here on data management is the way to go, and not necessarily from the government, but from the private sector. We get both viewpoints, possibly with some outside legal advice on that section as well. I don't know how this deals with proceeding with the bill, but that's my major hang-up. If we can get that satisfied, I think that would go a long ways to dealing with creating the balance between privacy protection and disclosure of the info on the billable hours side.

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Mr Gerretsen: Mr Chair, I'm prepared to withdraw this amendment at this time.

The Acting Chair: I have just been advised by the clerk that if this section is withdrawn, there is still section 27.1, information confidentiality, which you might want to take a quick look at.

Mr Hastings: What page is that on?

The Acting Chair: That's on page 2 of the bill, section 27.1.

Mr McDonald: If I can just go back, and I heard Mr Peters's concerns, in number (2) it says, "No person shall collect or retain personal information on behalf of the auditor unless the auditor determines that it is necessary for the proper administration of this act or a proceeding under it." I guess my question is, where's the check and

balance on you to retain? You could arbitrarily basically say, "I think we should keep this information." So how are we protecting Ontarians?

Mr Peters: That's in fact what this section was supposed to do. Section 3 says that if we retain information—it's only with information retention that we can remove all references in the information to the name of the individual and other identifying information. What we would do, actually, in reality—and we have done this in others—is that we would ask the hospital what they consider identifying information. We would ensure that we are in agreement with them, that we have no information on the file that they consider in any way inappropriate. That would be the check and balance.

The second check and balance is that we have a no-name policy. If you know our report, it sometimes gets frustrating for this committee when we, for example, say, "Before you is the CRF, the community reinvestment fund audit, which is also on the agenda today," we won't even identify a municipality; we just say municipality A, B or C. That will be how we deal with it.

We have been very careful in all regards that we do not publish inadvertently through our report information that should not be brought into the public domain or that destroys privacy. That's why we took this extraordinary amount of care with this section. This section has not only been subject to the privacy commissioner appearing before this committee, but also to deliberate update, and that includes IT and the legal counsel of the privacy commissioner. It was not done idly; it took them quite a bit of time to do research on this and update it. The restriction was that the background of this was that the hospital association came and said, "Look, we don't want the auditor to have access to medical records." So we said, "OK, how do we deal with this?" And the best way to deal with this is to deal through another offer of the Legislative Assembly, the privacy commissioner, and have them look at the issue. And that is the best up-to-date advice they could give us.

The IT question is a good one. They have dealt with that. Also, we have to have a broader aspect. I don't know which hospital you were on, Mr Hastings, but the board that I was on, we were in the process of developing the IT. The IT area, the integration of patient records in hospitals, is certainly something that is currently under development in many hospitals as to how to get information technology going on it. We may get good information in some hospitals, but we may get as good information but still manually prepared in other hospitals.

I appreciate Mr Gerretsen's effort to withdraw it, but I would consider this a restrictive clause, and if it were removed we would not have restrictions. This is what worries me. It's information as up to date technologically, legally and in every respect as we could bring to this committee on this area. I in a sense plead against myself, because right now we would have full access under the other sections. This restriction would make our life easier too in dealing with hospital administrators.

Mr Hastings: My suggestion would be that if Mr Gerretsen wants to withdraw it, fine, but I think we should pursue these specific items so that if it ends up later that you have to introduce a separate section, fine, or if you want to—and I'm not doing this to defeat your bill, by the way, so take it in the spirit you want, John, but in my estimation it doesn't satisfy my concerns, despite what Mr Peters says about it having the best technological protections in there. It may say it does. That doesn't mean it's translated practically. That's why I think if you withdraw it, I would support you in trying to find a way to bring it back later; or we get it dealt with, get the government side—because we've been accused of being sloppy on this before.

Understand my point: the point is that Mr Peters says that from a legal and technological perspective all the concerns are balanced and met, and if this section's withdrawn, we're back to open season on personal identifiers because there aren't any there in the existing act, whereas yours does that. I understand that, but second to that—

The Acting Chair: There are restrictions in the bill already. This is just an amendment to a particular section.

Mr Gerretsen: Can I just address that for a moment? I know we're talking about a lot of things. After the bill was given second reading, it was passed over to the privacy commissioner as a matter of due diligence, I suppose, and they came up with the idea that basically said, "Instead of having 27.1(2) and (3) in there, we think it's a better way to handle it by these amendments of (2) and (3). That's the long and the short of it. They think that protects people better than what's in the current bill. They came up with it; I didn't.

Mr Hastings: That may well be their belief. I'd like to submit and challenge their belief in front of some good IT people, database administrators, and hear from them, both inside and outside the government. With all due respect to the privacy commissioner, we're dealing with this from a legal perspective. She's had some bland assurances from other lawyers, outside and inside government, but I've very seldom seen a good lawyer who has an IT practice as well. They don't combine them very much. We just accept on face value. I'm sorry, in this instance I'm not accepting that.

Mr Gerretsen: But my bill—

Mr Hastings: It's a nice assurance, great.

Mr Gerretsen: My bill says in (3), "If the auditor retains information relating to the medical ... " he shall "remove all references in the information to the name of the individual ... " and

"(b) retain the information by using a system of identification" other than the name of the individual.

That is what my bill says. I'm prepared to live with that and to work out whatever else needs to be done at some future date, but I thought my bill already had that in there. They came back with the idea that "We think this is a little bit better." Quite frankly, I can take it or leave it as far as the amendment is concerned.

Mr McDonald: In subsection (3) it refers to medical records. What about payroll records or business contracts? It doesn't address that at all.

Mr Peters: Because to those we have totally free access. There's no restriction on that; otherwise it would restrict our audit. If you remember, we had a bill before that talked about termination contracts and stuff like that. If we couldn't look at those, I don't think there would be a point in auditing. Right now, the act gives us full and free access to all the information we consider necessary for the purposes under the Audit Act. We have that access. This particular section is just a refinement that was put in, just a voluntary restriction that we put on. If you do not want it in, we are quite happy if it is withdrawn. It would help us. The drafting of it certainly helps us to do a protocol. To deal with Mr Hastings's concerns, I think that part of our audit of a hospital would be in particular the IT area and its security, like what firewalls are built in so that hackers don't get at the information etc.

We do IT audits and we have a special IT section so that we could give the assurance to the Legislature that the IT process is actually proper. I say that with some background of my own, because I was in charge of the IT committee of a hospital and we were very aware of that. I think that may be a way of dealing with the situation. The security issue is an issue that we would have to address in an audit, whether the legislation is saying this or not saying the other. So I would say that for proper conduct of the committee, I urge you to deal with it either way. If you want it out—but I would prefer, I would urge you actually—it has been a 12-year battle to get to this point and I would really appreciate it if we could get on with it and deal with the act.

Mr McDonald: I hear Mr Hastings's concerns. In subsection (2), what if we were to say "no person shall collect or retain personal information on behalf of the auditor," period?

Mr Peters: That would be an extreme constraint because that would mean that we could really not do a value-for-money audit. I'll give you a very practical example. One of the criteria for good nursing care is the incidence of bedsores, because that means patients were not moved properly etc. So if we wanted to talk about nursing care and have an inquiry into that and they could say, "No, that's the personal record of the individual. You cannot find out whether any patient in a hospital actually had bedsores," that would be such a restriction on the audit, to use a micro case, that we could not conduct a proper value-for-money audit. We do need this discretion that is necessary for the proper administration of the act.

That's all we would use it for, because under the old subsection 27(2) of the act, we cannot use the information for any other purpose than for the purposes of the Audit Act or if there is something to do with the Criminal Code. We cannot use the information for any other purpose in any event. It's a beautifully balanced piece of legislation. It says on the one hand, "You can have access to the information necessary to conduct the audit but you cannot use the information for any other purpose than under the Audit Act." In that regard, we have a balance here.

Mr McDonald: Chairman, could we ask for a five-minute recess just so we can get some clarification? Is that fine with you?

The Acting Chair: OK. We'll recess for five minutes. *The committee recessed from 1134 to 1147.*

The Acting Chair: We'll resume the committee meeting.

Mr Hastings: Section (b) of section 6, subsection 27 on page 22. "Retention of information": there's (a), (b). The focus I want to put on is:

"(b) retain the information by using a system of identification that does not disclose the name of the individual or any identifying information referred to in clause (a)."

I would like to amend the amendment of (b) to provide certain wording that says, "retain the information by using a system of identification at the source"—of the server—"that the Provincial Auditor would utilize by taking out the personal identifying information of an individual or institution"—hospital, in this case—"so that the auditor only sees the generic information."

The Acting Speaker: OK. Just let me get the wording down.

Mr Hastings: "Retain the information by using a system of identification at source that separates personal identifiers from generic information."

You would say, "Does that only apply to the Ministry of Health?" No. That would apply to information by a social services counsellor in corrections, say, or a parole officer.

The Acting Chair: Now, what do you take out of there, John?

Mr Hastings: I'd take out the wording after "identification" that says "that does not disclose the name of the individual or any identifying information referred to in clause (a)." So the purpose is that you end up with a system of identification that separates out personal, confidential identifiers from generic information by the utilizer.

The Acting Speaker: Did you want to add "confidential" in there?

Mr Hastings: I didn't before, but probably it should be in there, that legislative counsel is trying to create. So at source you have a system, not afterwards, because right now these ministries—it's all together, as I understand it. So the obligation is on the auditor's office to create a system that separates out, not just by firewalls or encryption, whatever technology is needed to make sure the balance is retained between getting your billable hours, whatever it is, and personal identifiers. That's the essence of this amendment to the amendment.

The Acting Chair: John, let me just see if—"retain the information by using a system of identification at source that separates out personal and confidential identifiers from personal information."

Mr Hastings: "From generic information."

The Acting Chair: "From generic information."

Mr Hastings: "Of the user" or "for the user"; in this case, the auditor and the people he or she is auditing.

That's the essence of it. I'm trying to retain some of the—

The Acting Chair: What was that? From generic—

Mr Hastings: "From generic information by the user."

The Acting Chair: "By the user." OK.

Mr Hastings: That could be either the auditor's office or the people who had to provide the information—a psychiatrist or a corrections parole officer or even down to the corporate, although that's already available.

The Acting Chair: I think we have that. Let's ask the clerk if she can read this.

Clerk of the Committee (Ms Anne Stokes): Sub-section (3), clause (b) would read:

"(b) retain the information by using a system of identification at source that separates out personal and confidential identifiers from generic information by the user;"

The Acting Chair: This is an amendment to the amendment to clause 27.1(3)(b), that it be replaced by the wording that was just read by the clerk. Are we all in favour? Agreed.

Now the amendment as amended. Does that carry? Carried.

Shall section 6 of the bill, as amended, carry? Carried.

Sections 6.1 and 6.2: essentially that's that sheet of paper I had gotten out before. There was a technicality in the identification of the table on page 3 of that set out in the table to section 6.1. It was incorrectly identified as another section, so that's essentially identifying what the proper section is.

Mr Gerretsen: Is it necessary for me to read this whole thing or can it simply be filed?

The Acting Chair: If the committee agrees to accept this document, he doesn't have to read this out.

Mr Gerretsen: Then I would move that the bill be amended by adding that following the heading about sections, complementary amendments, as outlined in the three pages that are now filed with the clerk.

The Acting Chair: Shall new sections 6.1 and 6.2 of the bill carry? Carried.

Shall section 7 carry? There are no amendments. Carried.

Section 8.

Mr Gerretsen: I move that section 8 of the bill be struck out and the following substituted:

"Short title

"8. The short title of this Act is the Audit Statute Law Amendment Act, 2002."

The reason it's necessary is because it's affecting the other acts we passed on the schedule.

The Acting Chair: Shall the amendment to section 8 carry? Carried.

Shall section 8, as amended, carry? Carried

Mr Gerretsen: There is one other amendment.

I move that the long title of the bill be amended by striking out "to insure" and substituting "to provide."

I understand that this needs unanimous consent because it deals with the title of the bill. It's just that I feel that the word to "provide" is better than to "insure" because the auditor, in my opinion, doesn't insure; he provides a service. So I'll ask for unanimous consent.

Interjections.

Mr Gerretsen: I've asked for unanimous consent.

The Acting Chair: He's got that, but the clerk is suggesting that this doesn't affect the act—or it doesn't affect the auditor, rather. It's the act that's insuring and not the auditor.

Mr McDonald: Maybe Mr Gerretsen could tell me the difference between "to insure" and "to provide." What is your thought?

Mr Gerretsen: My thought was that "to insure" provides more or less the notion of giving a guarantee that if something happens, something else happens. The auditor doesn't do that. The auditor provides a service that gives us the best opinion as to whether or not programs are carried out on a value-for-money basis.

The Acting Chair: The clerk has pointed out that it's the act that is insuring and not the auditor in this particular statement.

Mr Gerretsen: If she thinks it's out of order and if that's it, then I'm prepared to withdraw it. I would never challenge the clerk's authority.

The Acting Chair: So you will withdraw that?

Mr Gerretsen: I'll withdraw that.

The Acting Chair: All right. So the title is the original title.

Shall the title of the bill carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried. Very good. Shall do.

Thank you very much. Now, we have a—

Mr Gerretsen: Could I just make a statement? I would like to thank all of the committee members for working on this and being so co-operative in giving greater insurability and accountability to the auditor's office. So I'd like to thank Mr Galt for your participation today, Mr McDonald, Mr Gill and Mr Hastings, and of course my own colleagues, and especially Ms Martel over here.

Mr Peters: I would like to thank the committee as well.

The Acting Chair: We had another piece of business, the committee's report, did we not? Or should we leave that till the next—

Interjection.

The Acting Chair: We'll leave the committee's report until next week and we'll deal with that as the first item. Thank you very much, ladies and gentlemen. We are adjourned.

The committee adjourned at 1158.

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