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Standing Committee on Social Policy

Child and Family Services Statute Law Amendment Act, 2008

Comité permanent de la politique sociale

Loi de 2008 modifiant des lois en ce qui concerne les services à l'enfance et à la famille

Chair: Shafiq Qaadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 8 December 2008

Lundi 8 décembre 2008

The committee met at 1436 in committee room 1.

CHILD AND FAMILY SERVICES STATUTE LAW AMENDMENT ACT, 2008

LOI DE 2008 MODIFIANT DES LOIS EN CE QUI CONCERNE LES SERVICES À L'ENFANCE ET À LA FAMILLE

Consideration of Bill 103, An Act to amend the Child and Family Services Act and to make amendments to other Acts / Projet de loi 103, Loi modifiant la Loi sur les services à l'enfance et à la famille et apportant des modifications à d'autres lois.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I'd like to call the meeting of the Standing Committee on Social Policy to order. As you know, we're here for clause-by-clause consideration of Bill 103, An Act to amend the Child and Family Services Act and to make amendments to other Acts.

I would now invite any opening comments, gestures of reconciliation or coalition, as the case may be, before we begin the consideration of the clauses.

Seeing none, if there are no amendments coming forward for sections 1 and 2, we'll do block consideration of those. Those in favour of sections 1 and 2, as is? Those against? Sections 1 and 2 passed, as is.

We'll now have our first clause presented by the NDP. Motion 1.

Ms. Andrea Horwath: I move that subsection 3(4) of the bill, setting out subsection 90(3.1) of the Child and Family Services Act, be struck out.

The amendment removes the clause that grants the ministry employees or other designates powers of a peace officer. The reason for the amendment is that there should not be expanded power of peace officers given in a blanket way, the way this clause suggests. Regardless of the training and the role of staff working with children, it should not be blurred with that of an officer.

The Chair (Mr. Shafiq Qaadri): Comments? Replies?

Mrs. Maria Van Bommel: I certainly cannot agree with this particular motion. It is the intent that under the designation of peace officers, they would only be designated as peace officers within the confines of their job description. There may have been some concerns around things such as peace officers carrying weapons, but service providers in the youth justice system don't carry weapons, so it's not that the peace officer designation would present any danger to children and youth. But it certainly is something that in some instances may be necessary for protection of the child. In the system, as it is now, when a child or youth were to, say, be escorted out, the service provider may not have a way of restraining or keeping that child close to them; whereas, as a peace officer, if the child were to, say, ask to go to the washroom, they would be able to keep them close to them. That may be necessary in some situations, where we need to be able to do that.

In terms of the safety of service providers and what they may need to enforce, we also have situations where service providers are attacked. Service providers, as they are now, would not be able to take any action. They can call the police, but they can't take any action to restrain the individual. As peace officers, they would be able to do that. So we feel that it's still important for the designation of "peace officer" to be there.

The Chair (Mr. Shafiq Qaadri): Any further comments or questions before we proceed?

Those in favour of NDP motion 1? Those opposed? I declare NDP motion 1 to have been lost.

Shall section 3 carry, as is? Carried.

Shall section 4 carry, as is? Carried.

We'll now proceed to the next motion: NDP motion 2 on section 5.

Ms. Andrea Horwath: I move that subsection 5(1) of the bill, setting out subsection 93(2) of the Child and Family Services Act, be struck out and the following substituted:

"5.(1) Subsections 93(1) and (2) of the act are repealed and the following substituted:

"Open and secure detention

"Initial open detention

"93.(1) A young person who is detained under the federal act or the Young Offenders Act (Canada) shall initially be detained in a place of open temporary detention and shall only be moved to a place of secure temporary detention in accordance with subsections (2) and (2.1)

"Where secure detention available

"(2) A provincial director may detain a young person in a place of secure temporary detention only if the provincial director is satisfied that,

"(a) it is necessary to do so in order to ensure the young person's attendance in court; or

"(b) it is necessary to do so in order to ensure public safety.

"Alternatives to secure detention

"(2.1) In making a determination under subsection (2), the provincial director shall consider all alternatives to secure temporary detention that are reasonable in the circumstances and shall only make an order for secure temporary detention if there is no alternative, or combination of alternatives, to secure temporary detention."

The Chair (Mr. Shafiq Qaadri): Are there any further comments you'd like to make, Ms. Horwath?

Ms. Andrea Horwath: This amendment was drafted and is under your consideration, to the committee members, because we do not believe that young offenders should be treated the same way as adults. This section borrows language that is used in the adult system. Custody itself, we know, is a disruptive and traumatic experience and can have extremely negative consequences for young people down the line. That's why it's extremely important to address the issue of detention in a reasonable and thought-out way. So keeping in mind the principles of the Youth Criminal Justice Act of least—and I emphasize "least"—intrusive means, open detention should be the first point of entry into the system.

We also have to include provisions which take into consideration where secure detention may be used in instances where there is a need to ensure a young person appear in court or where it's necessary in the name of public safety, absolutely. But the amendment before the committee is one that draws on recommendations from submissions that were made by the Provincial Advocate for Children and Youth as well as Justice for Children and Youth, and I hope the committee will consider that.

In her opening remarks when introducing this bill, the minister did talk about trying to create a system that was beneficial for young people in the criminal justice system. I believe that this amendment is in tune with that emotion or at least that intended framing that the minister put forward. I ask the committee members to consider supporting it.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. Mrs. Van Bommel.

Mrs. Maria Van Bommel: We have particular concerns with this motion because it assumes every child or youth in conflict with the law would be put into open custody immediately, and there's no regard in the motion for the risk or the types of charges that this individual may be faced with. We feel that the provincial director would be the most appropriate one to deal with this, should there be a question of that.

Currently, what happens is that an assessment is made when an individual is charged. The presumption under the Child and Family Services Act is that we would deal with it in open custody. Nevertheless, there should be the option, if it's necessary, for the child to be put into secure custody, should it be for their own safety or for the safety of others in the open-custody area. There are any number of possibilities, but certainly, we absolutely agree with you that the intent of this act, and the amendments to the act, is to take youth out of the adult system and to treat them differently. That's what we want to do. We're transforming the youth justice system so that we treat them differently; we give them better opportunities.

But there still needs to be an opportunity, if necessary, to put an individual into secure custody. As I said, that could be for their safety; it could be for the safety of others. The provincial director would probably be the best person to make that decision.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. Horwath.

Ms. Andrea Horwath: I respect the comments made by the parliamentary assistant, but I have to say two things that I think are very clear. One is that the language the government chose to use in fact does reflect more the adult criminal justice system. That's why I put the amendment forward.

The other issue to keep in mind is that my amendment does allow for the very things that Mrs. Van Bommel is talking about, in terms of public safety and in terms of ensuring that the young person is going to attend in court. But what my amendment does is actually speak to the issue in the language that we think is more appropriate when we're dealing with young people—what the government purports is their motivation or their framework, but in fact it does not ring true when you look at the language that they've provided in the bill. That's why this kind of language is more reflective of that sentiment, and I see no reason why—I mean, we can't assume, if someone is charged, that they're guilty. It's disturbing to me that that is the kind of explanation we get from the parliamentary assistant, that, depending on their charges, assumes they're guilty of those charges. That's very disconcerting to put on the record in this committee hearing.

However, the reality is that the amendment I put forward is one that is much more in line with the idea that this is about youth, young people, not adults, and that the principle of "least intrusive means" in the Youth Criminal Justice Act is the one that's supposed to be guiding or should be guiding the government's hand, in my opinion, respectfully.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mrs. Maria Van Bommel: Again, I want to absolutely—everyone is innocent until proven guilty. I don't disagree with the member in any respect in that way. But the motion, as put forward, does not take into account the risk in terms of charges, or risk to people who are within the open custody, or risk to the individual, should they go into open custody. We need that flexibility to be able to make those decisions. I think that the provincial director certainly is the appropriate person to make those decisions and needs to have that flexibility.

But automatically putting them into open custody, I think, in some situations may be more risky and create danger, not only for the child who is in conflict with the law but possibly for those other children who are in open custody already.

Ms. Andrea Horwath: I really don't want to belabour the point. I mean, it's really clear that the government is going to win all of these debates by virtue of numbers.

I find it frustrating that the deputants that we heard, almost every single one, talked about the effect of secure custody, talked about the impact on young people of that experience—it's my belief that if we're truly transforming the youth justice system, we should be transforming it in a way that does create those positive opportunities and outcomes for young people so that they can change course. What the government insists on doing in this particular piece of the bill is the exact opposite. I find that extremely troublesome. But I will leave my comments at that, as it's obvious that this is going to pass, with the government's votes, anyway.

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The Chair (Mr. Shafiq Qaadri): Any further comments regarding NDP motion 2? If not, we'll proceed to the vote.

Ms. Andrea Horwath: Recorded vote, please.

Ayes

Horwath.

Nays

Broten, Jaczek, Levac, Munro, Ramal, Shurman, Van Bommel.

The Chair (Mr. Shafiq Qaadri): NDP motion 2 is defeated.

We'll proceed to NDP motion 3.

Ms. Andrea Horwath: I move that subsections 93(7) and (8) of the Child and Family Services Act, as set out in subsection 5(2) of the bill, be struck out and the following substituted:

"Application for return to secure temporary detention

"(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) only on the basis that the director is satisfied that secure temporary detention is necessary,

"(a) in order to ensure the young person's attendance in court; or

"(b) in order to ensure public safety.

"Same

"(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention and subsection (2.1) applies, with necessary modification, to the court's determination."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. I understand that I am now to inform the committee that NDP motion 3 is in fact officially out of order because it depended for its life on subsection (2.1), the previous motion, which as you know has been defeated. So I rule NDP motion 3 out of order.

We will now proceed to consideration of section 5, as is. Those in favour of section 5? Those opposed? Section 5 is carried.

We will now go to section 6. NDP motion 4. Ms. Horwath.

Ms. Andrea Horwath: I move that section 98.1 of the Child and Family Services Act, as set out in section 6 of the bill, be amended by striking out subsection (2) and substituting the following:

"Unannounced inspections

"(2) An inspector may undertake unannounced inspections on his or her own initiative.

"Unrestricted access

"(3) An inspector shall have unrestricted access to all persons employed by or working in every youth justice facility and to all young people and records in such facilities.

"Inspector's report

"(4) An inspector shall submit a report of the findings of an inspection, including an evaluation of the compliance of the youth justice facility with the laws of Ontario and with any licensing requirements and recommendations with respect to any steps that are necessary in order to ensure compliance.

"Dismissal for cause for obstruction, etc., of inspection

"(5) Any person employed by the ministry or by a service provider who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment.

"Offence

"(6) Any person who obstructs an inspection commits an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment to a term of not more than six months, or to both.

"Investigations completed as soon as possible etc.

"(7) An investigation under this section shall be completed as soon as possible after it is started and the investigation report shall be provided, without delay, directly to the office of the Provincial Advocate for Children and Youth."

If I could just give a brief explanation, I think that what this amendment seeks to do is pretty apparent, which is to provide increased oversight and accountability to the proposed inspections and investigations that are set out in the bill.

The bill as it is drafted, as the government provides, only applies to ministry staff in direct ministry-operated facilities. The duty to comply with investigations should exist for all employees who work in youth justice facilities directly operated or otherwise operated.

Furthermore, obstructing an inspection must be made a punishable offence. There is no reason at all why any investigation should be obstructed in any way, and we have to make it clear that that's not acceptable.

The standards for inspection of youth justice facilities that are set out in the United Nations Rules for Protection

of Juveniles Deprived of their Liberty served in part as the inspiration for this amendment, as was of course also mentioned by DCI.

In addition, it needs to be made clear that investigations must be time-limited. We can't have investigations dragging on forever and ever, because the issue is the information that's required to be submitted as well as the safety of children and youth. Investigation reports have to be provided promptly and directly to the office of the Provincial Advocate for Children and Youth.

We've just been through this fiasco here in the province of Ontario; we've just seen the advocate for children and youth in this province stonewalled by the government, by the ministry, not getting the information that the child and youth advocate requires to be able to fulfill his function or the function of his office in terms of protecting the interests of children and youth. Therefore it has to be very clear in the legislation that no one has the right to stonewall or prevent information from getting to the Provincial Advocate for Children and Youth, so that that office can do its appropriate job that was given to that office by the Legislative Assembly of this province.

Young people's allegations of harm or mistreatment must be received with the greatest seriousness and must be followed with swift and thorough investigation. The protection of the young person who made the complaint and others potentially affected should be the most important priority. That's why these changes are recommended.

The amendment draws, of course, on the submissions that we heard from the advocate for children and youth as well as Defence for Children International-Canada. I hope that the committee members will consider supporting this amendment.

The Chair (Mr. Shafiq Qaadri): Comments or replies to NDP motion 4?

Mrs. Maria Van Bommel: Currently, under the CFSA, any licensing provisions or granting of licence requires inspection. The member talked about ministry-operated facilities, but also transfer partners are required by legislation to undergo inspections. So, at minimum, the inspections would be done on an annual basis. In terms of the inspection itself, that is done throughout the system.

The issue of things such as, in particular the provincial child advocate—I'm sure the member is aware that the advocate has withdrawn his court action. The ministry is now working with him to establish an information protocol. When the term "without delay" is used here, there is no recognition of the fact that we are required by law to have the permission of youth to release information to the child advocate. There are still privacy provisions that these young people are entitled to, and that needs to be respected. So, because the motion doesn't address the privacy issues of the child, it just simply says that the report must be submitted to the advocate "without delay," I certainly can't vote in favour of the motion.

Ms. Andrea Horwath: I just want to make sure it's on the record that it's very clear in the act itself what the privacy requirements are and how the privacy of the youth are covered off. So notwithstanding that the government needs to put on the record its arguments, the reality is, and everybody knows it, that the act already clearly sets out the protocols for privacy and for youth sign-off in this regard.

Again, I would hope that the government has learned a lesson in terms of the way they're dealing with the advocate for children and youth. Having said that, I do believe that the best place to make sure that the advocate for children and youth gets the kinds of information that he needs to act as quickly as possible would be to have this amendment pass so that we know that it's not a whim of ministry staff or anybody else, but it's actually set out in legislation what the requirements are in terms of the provision of information.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Seeing none, we'll proceed to consider NDP motion 4. Those in favour? Those opposed? I declare NDP motion 4 to have been defeated.

We'll now proceed to consider PC motion 5.

Mrs. Julia Munro: I move that section 98.1 of the Child and Family Services Act, as set out in section 6 of the bill, be amended by adding the following subsection:

"Report to Provincial Advocate for Children and Youth

"(3) Investigation reports shall be provided directly to the office of the Provincial Advocate for Children and Youth upon request."

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The Chair (Mr. Shafiq Qaadri): Any further comments from any side?

Mrs. Maria Van Bommel: Again, the issue is the protection of the privacy of the children involved in this.

Mrs. Julia Munro: I'm sorry, could you just repeat the last part? I didn't hear it.

Mrs. Maria Van Bommel: Again, the issue is the time that is needed to make sure that the protocols for the privacy of the individuals are respected.

Mrs. Julia Munro: I would just add that this does not preclude that. This simply suggests that they would be provided upon request. There's no indication there in terms of what has to take place prior to that request being met. It's a commitment to make sure that those reports are, in fact, made available to the office of the Provincial Advocate.

Mrs. Maria Van Bommel: I think I still would say that we are working through the ministry with the advocate in establishing a protocol, and I think I feel more comfortable in having that protocol in place and dealing with it that way. I'm not sure that this is actually even within the scope of the bill, because it's dealing with the child advocate. There is an act that sets out the procedures for the child advocate, and maybe this would be better dealt with within that act.

Mrs. Julia Munro: I find that argument interesting, given the fact that the drafters of the legislation—that is, the government—included the parts of the advocate bill

that they chose to in this act. So I'm assuming that in taking into this act, Bill 103—there's the assumption, by making those changes to the child advocate bill, that by the same token, you could consider the motion that is made here and the fact that obviously it deals with germane parts of the advocate bill that have been put into this Bill 103.

Mrs. Maria Van Bommel: You mention that the child advocate—in particular, section 28, referring to the child advocate, and it's definitions that are dealt with. So it's not talking about the authority of the advocate or any such thing; it's simply dealing with the issues of definitions, so that we have consistency in definitions of "youth."

Mrs. Julia Munro: I don't want to prolong this any further, but I would just suggest that the importance here is the intent that the office of the Provincial Advocate will in fact receive reports. Naturally, given the shifting sands of discussion between the provincial advocate and the government over highlights of this particular bill we're discussing, it seems to me that it would be an appropriate opportunity for the government to demonstrate that commitment to making those changes by considering this particular amendment.

The Chair (Mr. Shafiq Qaadri): Any further questions or comments? Seeing none, we'll proceed to consider PC motion 5.

Ms. Andrea Horwath: Recorded vote.

Ayes

Horwath, Munro, Shurman.

Nays

Broten, Levac, Ramal, Van Bommel.

The Chair (Mr. Shafiq Qaadri): PC motion 5 is defeated.

Shall section 6, as is, carry? Carried.

Shall section 7 carry, as is? Carried.

We'll proceed now to section 8 and PC motion 6. Mrs. Munro.

Mrs. Julia Munro: I move that subsection 103(3) of the bill, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

"Opening, etc., of written communications to child

"(3) Subject to subsection (4), written communications to a child in care,

"(a) subject to clause (e), may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;

"(b) subject to clauses (c) and (e), may be examined or read by the service provider or a member of the service provider's staff in the child's presence, where the service provider believes on reasonable grounds that the contents of the written communication may cause the child physical or emotional harm;

"(c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor;

"(d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child; and

"(e) shall not be opened, inspected, examined or read by the service provider or a member of the service provider's staff if the written communication is to or from the Ombudsman or a member of the Ombudsman's staff.

"Communication to Ombudsman

"(3.1) Any written communication from a child in care to the Ombudsman or a member of the Ombudsman's staff shall be immediately forwarded, unopened, by the service provider."

The Chair (Mr. Shafiq Qaadri): Any further comments? Mrs. Van Bommel?

Mrs. Maria Van Bommel: Did you want to comment on it, Julia?

Mrs. Julia Munro: No, go ahead.

The Chair (Mr. Shafiq Qaadri): You have the floor, Mrs. Van Bommel.

Mrs. Maria Van Bommel: As you would be aware, we've also addressed this particular issue with a motion of our own. I think when your motion talks about the Ombudsman or a member of the Ombudsman's staff, currently it is already required under the Ombudsman Act that all written communication to children from the Ombudsman or to the Ombudsman is to remain unopened. That is currently in legislation under the Ombudsman Act. So I think that it's really not necessary to have that entrenched in this legislation because it already exists.

Mrs. Julia Munro: I guess the issue that was raised by many was the question of a clearer indication of what opportunities in law would be available to individuals within this kind of situation, where they need to be clear about what kind of communication is allowed and what is not. This motion simply speaks to the clarification, of making communication clearer, in terms of what's going to be allowed and what's not.

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. Horwath?

Ms. Andrea Horwath: I'll just make a quick comment. Something tells me that this is not going to pass, but I actually have an amendment as well along similar lines and I look forward to having further conversations when I raise it.

The Chair (Mr. Shafiq Qaadri): Those in favour of PC motion 6, if any? Those against? I declare PC motion 6 to have been lost.

I'll now invite NDP motion 7.

Ms. Andrea Horwath: I move that subsection 103(3) of the bill, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

"Opening, etc., of written communications to child

"(3) Subject to subsection (4), written communications to a child in care,

"(a) subject to clause (e), may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;

"(b) subject to clauses (c) and (e), may be examined or read by the service provider or a member of the service provider's staff in the child's presence, and may be withheld from the recipient in whole or in part,

"(i) where the service provider believes on reasonable grounds that the contents of the written communication may cause the child physical or emotional harm, or

"(ii) where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications may contain communications that are prohibited under the federal act or by court order;

"(c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor;

"(d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child; and

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"(e) shall not be opened, inspected, examined or read by the service provider or a member of the service provider's staff if the written communication is to or from the Ombudsman or a member of the Ombudsman's staff.

"Communication to Ombudsman

"(3.1) Any written communication from a child in care to the Ombudsman or a member of the Ombudsman's staff shall be immediately forwarded, unopened, by the service provider.

"Physical or emotional harm

"(3.2) For the purposes of subclause (3)(b)(i), physical or emotional harm means physical or emotional harm as prescribed by regulation.

"Return of objects

"(3.3) A service provider that removes an object that is sent to a child in care under clause (3)(a) or (d) shall provide instructions to the child, as approved by the ministry, indicating that the child may obtain the object once he or she is no longer receiving child protection services."

I think it's pretty clear what the purpose of this amendment is. It provides for the ability to send and receive communication and sees that as a right, including a right of children who are in custody. Communication has to be, as much as possible, not tampered with, and left unopened and unread, particularly in instances where it concerns solicitor-client privilege, the office of the Provincial Advocate for Children and Youth and the Ombudsman.

In cases where there is a need seen for the communication to be opened or inspected, it has to be seen in the context of potential illegality or potential physical or emotional harm to the young person. There has to be, in other words, a reason that this communication is being tampered with.

Any objects that are removed from a young person's communication in care, a service provider shall ensure that the young person is given complete instructions to retrieve these items once they have left care. Again, this is the issue of providing young people what is rightfully theirs after they leave the situation.

The other issue is the section of the bill in particular that deals with communications to young people. We heard very clearly that there were concerns, both from the Ombudsman and from Justice for Children and Youth, in terms of solicitor-client privilege. I would ask that the government members consider supporting this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. Mrs. Van Bommel?

Mrs. Maria Van Bommel: At the outset, I want to say we agree with motions 6 and 7 and the spirit in which they're intended. But I think if we refer forward to motion 10, you'll see that we very clearly state that there are others to which this would be applied, in terms of the exemption of opening mail, not just to the Ombudsman and the advocate.

Also, in this particular motion, the returning of objects is a bit of a concern because it seems to imply that the child could get all objects back and it doesn't say anything about if those objects were illegal substances of some kind. If a child comes out of protection and the object that was taken away was an illegal substance or an illegal object of some type, would that mean that the child would then be able to get that item?

Ms. Andrea Horwath: I appreciate the comments the parliamentary assistant raises, although I think it's pretty apparent that anything that is illegal and seized as being an illegal item is not something that would be returned to the child.

However, there are other things that perhaps would be confiscated, even things like written documents, letters, those kinds of things, and I don't believe that the child should forever be without receipt of those things, which might have been withheld for some reason or another, forever. I think that's inappropriate and that's why this is before us.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Those in favour of NDP motion 7? Those opposed? I declare NDP motion 7 to have been defeated.

NDP motion 8. Ms. Horwath?

Ms. Andrea Horwath: Mr. Chair, just for clarification, will this one be considered out of order, or is it in order to bring it forward?

Mr. Dave Levac: You can withdraw it.

Ms. Andrea Horwath: I'm sorry?

Mr. Dave Levac: You can withdraw it.

The Chair (Mr. Shafiq Qaadri): It's in order: Proceed.

Ms. Andrea Horwath: I move that subsection 103(4) of the Child and Family Services Act, as set out in subsection 8(3) of the bill, be amended by striking out clauses (b), (c) and (d) and substituting the following:

"(b) may be examined or read by the service provider or a member of the service provider's staff in the pres-

ence of the young person and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications may contain communications that are prohibited under the federal act or by court order;

"(c) shall not be examined or read under clause (b) if it is to or from the young person's solicitor;

"(d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is from a person described in subclause (1)(b)(ii), (iii) or (iv); and

"(e) shall not be opened or inspected under clause (a) or examined or read under clause (b) if it is to the Ombudsman or a member of the Ombudsman's staff."

Again, I think it's pretty straightforward that this would provide the right to communication, and the fact that young persons in custody have the right to have their ability to communicate and their privacy protected.

The Chair (Mr. Shafiq Qaadri): Mrs. Van Bommel.

Mrs. Maria Van Bommel: We certainly agree that an amendment is needed to protect the communication rights of youth. Again, I refer everyone to motion 10. I find that this motion is too narrow in its criteria in respect to written communications. I think where there is concern about the best interests of the young person, public safety, or the safety and security of the facility, there needs to be the opportunity for service providers to make that judgment in terms of what should be opened and in front of the child. Certainly, there are situations, such as the opportunity to maybe contact a victim or a victim's family before the person is brought to court, and an opportunity to have a court order restricting that kind of access is there. So I think it's important that service providers have a broader opportunity to make that judgment.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to consider NDP motion 8. Those in favour? Those opposed? NDP motion 8 defeated.

PC motion 9. Mrs. Munro.

Mrs. Julia Munro: Given that the previous motion has been defeated and mine is (e)—it's the same one—I would just say that I would withdraw it, given that it has been defeated in part of the earlier motion.

The Chair (Mr. Shafiq Qaadri): Government motion 10. Mrs. Van Bommel.

Mrs. Maria Van Bommel: I move that clauses 103(4)(c) and (d) of the Child and Family Services Act, as set out in subsection 8(3) of the bill, be struck out and the following substituted:

"(c) shall not be examined or read under clause (b) if it is to or from the young person's solicitor; and

"(d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is to or from a person described in subclause (1)(b)(ii), (iii) or (iv)."

The Chair (Mr. Shafiq Qaadri): Any further comments, questions, queries?

Mrs. Maria Van Bommel: What this particular motion does is, it allows that written communications to or from the office of the Provincial Advocate for Children and Youth, Ombudsmen, MPPs or MPs, not be opened, examined or read.

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

Mr. Dave Levac: From some of my experience of four years in this portfolio, sitting on the other side, I share with you some of the concerns that I heard in the previous motions. The spirit of what was being looked for is admirable, but what I discovered while I was inside those places—visiting, by the way. I came across some examples that were shared with me by the superintendents and the management—within the scope of this bill, I think this particular amendment is trying to capture the spirit that was asked for by the opposition, which was to ensure that the child advocate and the Ombudsman and MPPs and MPs were receiving that capacity in the legislation.

1520

I will testify to some very questionable things that were caught when they opened some of those letters and communications. In some cases, I actually saw some very intimidating letters to the victims of the people who were there. They were sending letters to the victims and, had they not intercepted them, those letters would have been received by the very people all of us want to protect.

I want that on the record to indicate that the scope was very important for us, to capture the intent of what the opposition was saying but to ensure that people who are providing those services are given the faith and good judgment to be able to intercept those letters at the appropriate time to avoid victims being victimized twice.

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

Ms. Andrea Horwath: I have to say I'm going to support this amendment, although I would have preferred, obviously, my amendment to be accepted. I'm glad that the government has seen that there needed to be an improvement here and appreciate that it's before us.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 10? Those opposed? Government motion 10 carried.

NDP motion 11. Ms. Horwath.

Ms. Andrea Horwath: I move that section 103 of the Child and Family Services Act, as set out in subsection 8(3) of the bill, be amended by adding the following subsection:

"Paramount right

"(4.1) Despite subsection (4), a young person's right to send and receive written communications is a paramount right and is subject to following safeguards:

"1. In proposing to examine or read a written communication under subclause (4)(b)(i), the person proposing to examine or read the communication must, before doing so, set out in writing his or her reasons for believing that the written communications may be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody.

"2. In the written reasons required by paragraph 1, the person must set out fully his or her understanding of what

are the best interests of the young person, what the public safety issue is or how safety or security of the place of detention or custody might be threatened.

"3. In proposing to examine or read a written communication under clause (4)(c), the person proposing to examine or read the communication must, before doing so, set out in writing his or her reasons for believing that the communication contains material that is not privileged as a solicitor-client communication and must share those reasons with the young person's solicitor, who shall be given a reasonable opportunity to comment on the reasons before the communication is examined or read.

"4. A service provider shall annually report to the minister on any activities that the service provider or the service provider's staff has undertaken under subsection (4) and the report shall contain such detail as is necessary to fully set out the reasons for interfering with a young person's right to send and receive written communications.

"5. The minister shall annually publish a report summarizing the instances where a young person's right to send and receive written communications has been interfered with under subsection (4), but shall do so in a fashion that protects the identity and privacy of any young persons."

Again, Chair, if I can just continue, having put the motion forward, to explain that the purpose of it is to really articulate the right of a young person to send and receive communication and to articulate that the safeguarding of that right is subject to some procedures. Basically, it puts forth extra mechanisms of accountability, the issue being that it provides that checklist, if you will—the requirement, if you will—that ensures that communications are being interrupted, interfered with or reviewed with good reason and not in a fashion that becomes simply a habit or a procedural implementation of constant interception of communications.

The whole purpose is that there has to be some accountability. It's very easy for young people's rights to be minimalized or removed. Putting requirements on service providers in this regard assists in ensuring that the young people's rights to have their communication kept confidential as much as possible are much higher—I believe that it's important that service providers are kept accountable, not only in terms of what might become a procedural practice, in terms of constantly opening these kinds of communications or reading these kinds of communications, but also ensuring that the service provider is cognizant of what the rights of the young person are, what is really in the interest of the young person and what is and is not a public safety issue or what is or is not something that might threaten the facility itself.

So, again, although some might think that this is a bit too much paperwork, unfortunately we've seen too many times the situation where young people's rights are overridden as opposed to being upheld, and we believe that putting this accountability measure in place will help to maintain the rights of young people and their ability to receive communication. As well, it creates that accountability mechanism for service providers, who would have to, on an annual basis, provide information about the extent to which they're collecting, interfering with or reading communications from young people in custody.

The Chair (Mr. Shafiq Qaadri): I am told that paragraph 3 of NDP motion 11 grievously offends the legal sensibilities here and therefore is out of order. If you require commentary, I would invite it from legislative counsel.

Mr. Albert Nigro: Paragraph 3 of subsection (4.1), as proposed in the NDP motion, was drafted in light of clause 103(4)(c) as it existed when the bill was introduced and as it existed when the bill was considered by this committee after second reading. That clause was amended by what is labelled "government motion number 10, clause c." It has taken out a clause from the clause, if I could put it that way:

"unless there are reasonable and probable grounds to believe that it contains material that is not privileged as a solicitor-client communication"

But since that clause is removed, paragraph 3 is now redundant as drafted.

Ms. Andrea Horwath: I understand that. Thank you very much for the clarification. So perhaps the remainder of the motion can be considered. I'll withdraw item number 3, and then the rest would be renumbered so that 4 becomes 3 and 5 becomes 4.

The Chair (Mr. Shafiq Qaadri): Accepted, and as Ms. Horwath has said, paragraph 3, NDP motion 11, has been withdrawn, so we will now consider NDP motion 11 amended.

Those in favour of NDP motion 11? Those opposed? NDP motion 11, amended or unamended, defeated.

Shall section 8, as amended, carry? Carried?

Section 9, PC motion 12.

Mrs. Julia Munro: I move that section 103.1 of the Child and Family Services Act, as set out in section 9 of the bill, be amended by adding the following subsection:

"Exception, Ombudsman

"(3) Nothing done under this section applies to the Ombudsman or a member of the Ombudsman's staff acting under the authority of the Ombudsman Act."

The Chair (Mr. Shafiq Qaadri): Further comments or questions? Mrs. Munro, do you have anything? No?

Mrs. Van Bommel, then.

Mrs. Maria Van Bommel: I'd like to refer the committee to motion number 14, which expands the visits not just to include the Ombudsman but also the advocate and MP and MPPs.

Mrs. Julia Munro: Yes, thank you. And—

Mrs. Maria Van Bommel: It improves upon—

Mrs. Julia Munro: Yes, it does.

Mrs. Maria Van Bommel: We, again, accept the spirit of what you're doing, but we feel that we can broaden it further in motion number 14.

Mrs. Julia Munro: And that's fine.

The Chair (Mr. Shafiq Qaadri): Further comments?

Seeing none, those in favour of PC motion 12? Those opposed? PC motion 12 defeated.

NDP motion 13.

1530

Ms. Andrea Horwath: I move that section 103.1 of the Child and Family Services Act, as set out in section 9 of the bill, be amended by adding the following subsections:

"Exemption

"(3) Conditions and limitations upon the visits to a young person may not be imposed under subsection (1) in respect of the following persons:

"1. Members of the young person's family.

"2. The young person's solicitor.

"3. Another person representing the young person, including the Provincial Advocate for Children and Youth.

"4. The Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff.

"5. A member of the Legislative Assembly of Ontario or of the Parliament of Canada;

"Conditions and limitations

"(4) The service provider shall only impose conditions and limitations under subsection (1) where there is clear and convincing evidence that they are necessary and shall impose the least intrusive conditions and limitations as are possible to ensure the safety of staff or young persons in the facility."

Again, this is similar to the government motion that is coming next, and I expect the government members will be supporting their own motion. However, I think it's important to note that the motion I have put forward is a little bit broader than the government's motion in that it talks about family members and includes the young person's solicitor as well. I would hope that in the spirit of the government recognizing that their motion was more broad and encompassing than the opposition's motion, maybe they will recognize that my motion is more broad and all-encompassing than theirs.

Mrs. Maria Van Bommel: Certainly, again, I recognize the spirit and intent of the motion, and as much as I feel it's important for family members to have some access, I have particular concerns about the definition of family members. Is this immediate family? The possibility of having a family member, or someone who claims to be a family member, come in—it could be someone who could also have a potential for conflict with the law to have access to this child or youth. So I'm a little concerned about the definition of family members.

The Chair (Mr. Shafiq Qaadri): Shall we proceed to the vote?

Those in favour of NDP motion 13? Those opposed? I declare motion 13 defeated.

Government motion 14. Mrs. Van Bommel.

Mrs. Maria Van Bommel: I move that section 103.1 of the Child and Family Services Act, as set out in section 9 of the bill, be amended by adding the following subsection:

"Limited exception

"(3) Despite subsection (2), the service provider may not suspend visits from,

"(a) the Provincial Advocate for Children and Youth and members of his or her staff;

"(b) the Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff; or

"(c) a member of the Legislative Assembly of Ontario or of the Parliament of Canada,

"unless the provincial director determines that suspension is necessary to ensure public safety or the safety of staff or young persons in the facility."

The Chair (Mr. Shafiq Qaadri): Comments or queries?

Those in favour of government motion 14? Those opposed? I declare government motion 14 carried.

Shall section 9, as amended, carry? Carried.

Shall sections 10 and 11 carry? Carried.

Section 12. NDP motion 15. Ms. Horwath.

Ms. Andrea Horwath: I move that subsection 127(5)-(9) of the Child and Family Services Act, as set out in subsection 12(2) of the bill, be struck out and the following substituted:

"Continuous observation of child

"(5) The service provider shall ensure that a child or young person who is placed in a secure isolation room is continuously observed by a responsible person.

"Review

"(6) Where a child or young person is kept in a secure isolation room for more than one hour, the person in charge of the premises shall review the child's or young person's isolation at prescribed intervals.

"Release

"(7) A child or young person who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child or young person is not likely to cause serious property damage or serious bodily harm in the immediate future.

"Maximum periods

"(8) In no event shall a child or young person be kept in a secure isolation room for a period or periods that exceed an aggregate of eight hours in a given 24-hour period or an aggregate of 24 hours in a given week."

It's pretty clear what this amendment attempts to do. We believe that secure isolation is a very heavy-handed way of dealing with young people. It is very traumatic, for young people and children particularly, to be put in a situation of secure isolation. What this amendment does, in our opinion, is it amends the bill to create a greater accountability around the use of secure isolation. All secure-custody detention facilities should be required to review the use of secure isolation—that's the next one that's coming—but in this particular case, it's really clear to us that the use of secure isolation has to be done with safeguards in place, and we believe that this amendment provides some of those safeguards.

The Chair (Mr. Shafiq Qaadri): Further commentary? Mrs. Van Bommel?

Mrs. Maria Van Bommel: My particular concern with this amendment is that you're talking about continuous observation regardless of the age of the child or youth. My own experience is that while it's appropriate

for continuous observation of someone, say, 12 to 15—because at that age the child may feel abandoned if they have a sense that there's not an adult outside—on the other hand, a teenager in the 15-to-18 range would feel that you were being intrusive, invading their privacy, and you might actually aggravate them more by being in their face, so to speak.

I think in terms of dealing with the frequency of observation, I certainly understand the concerns and we are very cognizant of recommendations coming out of inquests into these things, but I think we need to also understand that the range of ages that we're dealing with here have different levels of needs and different levels of maturity and, through regulation, we need be able to address those.

Ms. Andrea Horwath: I just think it's important right now to put on the record the fact that this government did not consult at all with young people in the drafting of this legislation. There was no conversation with young people in the drafting of this bill, nor since it was tabled in this Legislature. So I find it extremely disconcerting that the government would purport to know what's on young peoples' minds and how they might feel or not feel about how secure isolation is provided, whether there's observation or no observation. I find it actually quite offensive that, without having any consultation, the government is putting on the table some acknowledgement or expectation that they know what's on the minds of young people and how they broadly would receive that kind of observation when in secure isolation. I find it actually offensive and I think it's problematic. Again, one of the reasons why I was extremely frustrated with the way this bill came to pass from day one is the total lack of acknowledgement by this government that young people have a right to participate in the preparation and development of legislation that's going to affect them.

I don't purport to know how young people would receive observation during secure isolation, but I would expect that, at the very least, the Child and Family Services Act standards that protect a young person in secure isolation should be for all young people, not just people of a certain age. That's why this amendment is before us, to ensure that young people—yes, 16 and older—are not exempt from the safeguards of the use of secure isolation that were set out in the bill. We don't think it's appropriate.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to consider NDP motion 15. Those in favour? Those opposed? NDP motion 15 defeated.

Shall section 12, as is, carry? Carried.

Section 13 is a notice, number 16.

Ms. Andrea Horwath: I'm putting this notice forward that we recommend voting against section 13 of Bill 103, and, of course, the reasons for that are because the entire section of the bill would need to be removed rather than the passing of a motion to have it deleted. That's the purpose of this notice in front of us.

What the removal would do is amend the bill for greater accountability, again removing exemptions for reviewing or reporting secure isolations from some facilities. I believe, if I'm not mistaken, there might be something coming from the government—I'm not sure—in regard to this issue. Basically, we believe that there should be a review of secure isolation every three months—to make sure that isolation rooms are reviewed every three months.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. Any further comments? Mr. Levac?

Mr. Dave Levac: I might get my hand slapped on this one, but if I can ask Ms. Horwath a question on this particular notice. The section has to be removed completely under advice of the Clerk's office, and if there was a change to the time frame—maybe I can seek clarity from the clerk. If there was a change to the time frame of every three months, and it was changed to, let's say, a friendly amendment of six months, then would the amendment come back to the table, instead of having to vote against it? Albert?

Mr. Albert Nigro: If I understand what you're saying, what you would want to do is amend section 128 of the bill and change the time period from—

Mr. Dave Levac: Three months to six months.

Mr. Albert Nigro: —three months to six months. That would have to be moved as a separate motion. As the bill was drafted and as the committee considered it, basically there was an amendment to section 128 which exempted places of secure custody or secure temporary detention from the three-month rule. You could move a motion to change three months to six months; you can vote down section 13 as it exists now. I'm in the committee's hands on that.

Mr. Dave Levac: Just to continue to further clarify, instead of then having to deal with what Ms. Horwath was advised, which is to recommend voting against that entire section, if Ms. Horwath were to say that an amendment to the three-month period be six months, then it would remove her request by the clerk to vote against the section and allow her to get the amendment that she wants into the bil—provided and allowed to be a six-month time frame instead of a three-month time frame. Is that an appropriate way to describe it?

Mr. Albert Nigro: The question seems better answered by Ms. Horwath than by me.

Mr. Dave Levac: If that were to take place.

Mr. Albert Nigro: From a legal point of view, a new motion would have to be moved amending section 128 of the act, striking out "three months" and changing it to "six months."

Mr. Dave Levac: Okay, and then the rest of the section would be left alone and in place, but there would be a change of the "three months" to "six months," and that would be appropriate if she were to present that from the floor.

The Chair (Mr. Shafiq Qaadri): Procedurally, I understand that we would need to recess so that legislative counsel can actually draft such a motion and then reconvene and proceed from there.

Mr. Dave Levac: I'm in Ms. Horwath's hands.

Ms. Andrea Horwath: I would actually appreciate that. I think it's a good compromise and something that's probably worth—

The Chair (Mr. Shafiq Qaadri): So is it the will of the committee that we recess for this process? How much time do you need?

Interjection.

The Chair (Mr. Shafiq Qaadri): All right. This committee is recessed for 10 minutes.

The committee recessed from 1543 to 1600.

The Chair (Mr. Shafiq Qaadri): All right, we'll reconvene. Ms. Horwath has the floor for NDP motion 16a, hot off the presses.

Ms. Andrea Horwath: I move that section 128 of the Child and Family Services Act, as set out in section 13 of the bill, be amended by adding after "every three months" the following:

"or, in the case of secure custody or secure temporary detention, every six months"

What this does, of course, is provide that opportunity for required review of the use of secure isolation.

I want to thank the government members for considering this as an improvement to the bill. It's a compromise that I hope everyone will see as a valuable addition to the bill.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Dave Levac: I thank Ms. Horwath for that understanding, in the capacity of what we were trying to accomplish, which was to ensure that under secure custody and secure temporary detention, any excessive amount of reporting be minimized so that those particular individuals can do the job of taking care of those people. I want to be on the record, there was absolutely no intention of my intervention or the government's, after discussion, to stop the three-month supervision of mental health or any other institution. I'm glad it was pointed out so that we could work out the compromise. I appreciate that very much.

Ms. Andrea Horwath: Thank you.

The Chair (Mr. Shafiq Qaadri): Those in favour of NDP motion 16a? Those opposed? I declare NDP motion 16a to have been carried. I commend the committee on their new spirit of harmony and co-operation.

Shall section 13, as amended, carry? Carried.

We'll proceed to block consideration. Shall sections 14 to 27, inclusive, carry, as is? Carried.

Section 28. PC motion 17.

Mr. Peter Shurman: I move that the definition of "youth" in subsection 2(1) of the Provincial Advocate for Children and Youth Act, 2007, as set out in subsection 28(2) of the bill, be struck out and the following substituted:

"'youth' means one or more young persons within the meaning of the Child and Family Services Act and young persons who are being dealt with under the Youth Criminal Justice Act (Canada). ('jeune')"

This bill is really, in an overall sense, about bringing two sections of people between 12 and 17 together, so this makes sense.

The Chair (Mr. Shafiq Qaadri): Further comments?

Ms. Andrea Horwath: I'll support this because it's very similar to the amendment that we bring forward, as well.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mrs. Maria Van Bommel: From our interpretation of this motion, this would expand the jurisdiction of the youth advocate to youth who are placed in federal adult corrections facilities. Is that—?

Mr. Peter Shurman: I can't define that because that sounds like something that's regulatory. We're simply saying that we want the thing extended to cover the Youth Criminal Justice Act, only because that's the act that would be enforced at the higher end of the age spectrum.

Mrs. Maria Van Bommel: It's my understanding that that would be the effect of this particular motion, that the advocate would have contact with youth who are in the adult system, and that "adult" is defined by how the judge sentences the individual. So that would mean it isn't based on age, it's based on where the judge places that person.

We have situations where 19-year-olds in the youth justice system would, by age, be defined as adults, but because they are within the youth justice system they can appeal to the advocate. On the other hand, those who are placed in the adult system would have to appeal to the Ombudsman, and that's under existing legislation, because they're treated as an adult even though, by age, we would say they were youths. But the judge has sentenced them as adults, and they would be treated as adults and not as youths.

Mr. Peter Shurman: I hear what you're saying. I don't want to belabour the point, but it has been my understanding, since we've begun hearings on this bill, that the whole objective of this was to try to create uniformity and get children, in effect, out of an adult penal system and into a more secure youth-oriented facility. That being the case, we have to, for consistency's sake, look at both of these acts and dovetail them. If you don't mention the Youth Criminal Justice Act, you wind up, in effect, separating them, do you not?

Mrs. Maria Van Bommel: I need to refer to our legal counsel on that one because I'm not a lawyer. Dave?

Mr. Dave Levac: There are a couple of indications that once these individuals, who number very few—and that's important to point out—end up in adult supervision, the Ombudsman would have an opportunity to take care of their cases. It's not as if they were—

Mr. Peter Shurman: That doesn't give me a lot of comfort.

Mrs. Maria Van Bommel: They're not without—

Mr. Dave Levac: It's not as if they don't have someone to turn to, to advocate for them, on their behalf. The Ombudsman would take responsibility for that after they leave the institutions that we're trying to bring back in. At the judicial level, what happens is that when those appraisals are done, they're done with the intent of having them come to the youth detention. Then, if the appraisal

takes place and that's not the right spot for them—and it's going to be few and far between that it's not—then they move them to the adult circumstances, which then simply separates them from the youth that we're trying to protect as well.

Mr. Peter Shurman: I hear what you're saying. I'm simply saying that, notwithstanding that, the Youth Criminal Justice Act plays a role here because there's a division of responsibility which is arbitrary, is there not? You've just signalled that. So I'd like it to be covered, which is the purpose of this amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we will proceed to consider—pardon me?

Ms. Andrea Horwath: Mr. Chair, I would just like to comment. I'm going to support this because, in fact, we wanted a similar amendment.

The Chair (Mr. Shafiq Qaadri): Thanks.

Those in favour of PC motion 17? Those opposed? Lost. It was close, though.

NDP motion 18.

Ms. Andrea Horwath: I move that that the definition of "youth" in subsection 2(1) of the Provincial Advocate for Children and Youth Act, 2007, as set out in subsection 2(1) of the bill, be struck out and the following substituted:

"'youth' means one or more young persons within the meaning of the Child and Family Services Act and one or more young persons within the meaning of the Youth Criminal Justice Act (Canada).('jeune')"

Again, the purpose of this amendment is to make sure that the Provincial Advocate for Children and Youth Act includes young people on purpose, to reinforce the fact that young people in custody are, in fact, in some ways, in care. We believe that the office of the Provincial Advocate for Children and Youth would like to see that amendment.

We actually know that the office of the Provincial Advocate for Children and Youth did not participate in any way in the drafting of this legislation, and again wanted to put on the record that that's disconcerting. I think that it's more appropriate and more respectful to have these kinds of things vetted through the very organization whose legislation you're actually changing. So it's a bit problematic that the process that was undertaken by the government—or lack of process. Having said that, hopefully this was a learning experience and it won't continue to happen.

1610

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath, for the comments. Mrs. Van Bommel?

Mrs. Maria Van Bommel: The Youth Criminal Justice Act indicates that when youth are transferred to adult correctional facilities they are treated as adults. Adult legislation has jurisdiction over the services that are provided to them and, as such, the advocate's jurisdiction is over the youth system and the Ombudsman's jurisdiction is over the adult penal system.

Ms. Andrea Horwath: Again, I understand where the government's coming from, but nonetheless, a young person is a young person is a young person, and the child and youth advocate advocates for young people. Technically, if you're in custody, you in some ways can be considered to be in care. That's simply just a difference in the way that we interpret—

Mrs. Maria Van Bommel: But they still have the Ombudsman. It's not that they are totally abandoned once they move into the—

Ms. Andrea Horwath: Again, the Ombudsman is different than an advocate. We certainly learned that in the process of developing the legislation that governs the advocate's office. Advocates are different than Ombudsmen. Ombudsmen have to have a non-biased kind of perspective; advocates actually advocate and take the position that is in support of the young person at all times. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Those in favour of NDP motion 18? Those opposed? I declare it to have been defeated.

Shall section 28 carry? Carried.

Block consideration: sections 29 to 30 carry, as is? Carried.

PC motion 19.

Mr. Peter Shurman: I move that the bill be amended by adding the following section:

"30.1 The act is amended by adding the following section:

"'Provision of Information

"'16.1 The advocate may,

"'(a) require any officer, employee or member of any police service, governmental organization or service provider who, in the opinion of the advocate, is able to give any information relating to any matter that is the subject of a review, a systemic review or a complaint or advocacy by the advocate to furnish him or her with the information; and

"'(b) require the person to produce any documents or things, which in the advocate's opinion relate to any such matter and which may be in possession or control of the person.'"

The Chair (Mr. Shafiq Qaadri): Comments, Mr. Shurman?

Mr. Peter Shurman: Yes. This is new, to broaden the act to better reflect the advocate's role. The advocate appeared here in deputation to talk about the fact that he had a problem in obtaining information, and we would just like to give further assurances or provide further insurance that he does.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Shurman. I would just inform the committee that this amendment is apparently inadmissible, officially being beyond the scope of this bill. If you need any further commentary from legal counsel, it is available to you, Mr. Shurman.

I also inform the committee that NDP motion 20, being exact, is also beyond the scope of this bill, and therefore both are ruled out of order.

So, consideration of that new section, 30.1, has expired.

Shall section 31, as is, carry? Carried.

PC motion 21. Mr. Shurman?

Mr. Peter Shurman: I move that the bill be amended by adding the following section:

"Ombudsman Act

"31.1 Subsection 16(2) of the Ombudsman Act is repealed and the following substituted:

"To be forwarded

"(2) Despite any provision of any act, if a written communication addressed to the Ombudsman is written by an inmate of a provincial correctional institution, a child in care as defined in the Child and Family Services Act or a patient in a provincial psychiatric facility, the written communication shall be immediately forwarded, unopened, to the Ombudsman by the service provider or by the person for the time being in charge of the institution, youth custody facility or other facility...."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Shurman. I would also inform the committee that this particular motion is an unwanted orphan in that it seeks to amend the parent act that is not, in fact, before this committee, and therefore out of order and inadmissible.

I also inform the committee that NDP motion 22, being exact, falls under the same categorization, and therefore invalid, out of order.

Ms. Andrea Horwath: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Ms. Horwath?

Ms. Andrea Horwath: You can't fault us for trying.

Mr. Dave Levac: Did you guys work together?

Ms. Andrea Horwath: No, but we listened to the deputants, which maybe the government didn't do.

The Chair (Mr. Shafiq Qaadri): So consideration of section 31.1 is now expired.

We go to block consideration of sections 32 to 35. Shall they carry, as is? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 103, as amended, carry? Carried.

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

Thank you. Is there any further business before this committee? Seeing none—yes, Mrs. Van Bommel?

Mrs. Maria Van Bommel: I would just like to, first of all, thank the members of the standing committee. I think we all understood that the intent and the spirit of what we were doing was to transform the youth justice system and get our young people out of the adult system and treat them in a way that is appropriate for their age. So I want to thank all of you for your help in bringing this forward. I also want to thank the stakeholders who brought forward many important issues for us to consider. Thank you.

The Chair (Mr. Shafiq Qaadri): The committee does detect a new era of shared government, both in Ontario and Ottawa. Committee adjourned.

The committee adjourned at 1615.

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