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Lundi 1er décembre 2008

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
Clerk: Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 1 December 2008

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 1er décembre 2008

The committee met at 1430 in committee room 1.

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

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): The first order of business is having the previous subcommittee report entered into the written record, for which I'll call upon Mr. Dave Levac.

Mr. Dave Levac: This is a report from the subcommittee. Your subcommittee on committee business met on Friday, November 21, 2008, to consider the method of proceeding on Bill 103, An Act to amend the Child and Family Services Act and to make amendments to other Acts, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Monday, December 1, 2008.

(2) That the clerk of the committee, with the authority of the Chair, prepare and implement an advertisement strategy for the major daily newspapers; and post the information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(3) That interested people who wish to be considered to make an oral presentation on the bill should contact the clerk of the committee by Friday, November 28, 2008, at 12 noon.

(4) That if a selection process is required, the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.

(5) That the minister be invited to appear before the committee as the first witness.

(6) That the length of the presentation for witnesses be 20 minutes for groups and 10 minutes for individuals.

(7) That the deadline for written submissions be Tuesday, December 2, 2008, at 5 p.m.

(8) That the research officer provide the committee with a summary of the presentations and written submissions received by Wednesday, December 3, 2008, at 5 p.m.

(9) That the committee meet for clause-by-clause consideration of the bill on Monday, December 8, 2008.

(10) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report from the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

That is the report, Mr. Chairman.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Levac. Are there any questions or comments?

Mrs. Julia Munro: Yes, I just have one question with regard to the dates there given in points (8) and (9). I believe that we had agreed on a date for the amendments.

Mr. Khalil Ramal: If you don't mind, could you repeat—

The Chair (Mr. Shafiq Qaadri): If you could just repeat what you said, Mrs. Munro, maybe with the microphone—

Mrs. Julia Munro: Certainly. The deadlines that are given in points (8) and (9)—I believe that we also had agreement on the submission for amendments.

Ms. Laurel C. Broten: In response to Mrs. Munro's comment, my recollection is the same, that we had set a parameter by which all parties would submit their recommendations for clause-by-clause—if the research was coming in by the Wednesday—by Thursday at 5 o'clock. That's my recollection.

Mrs. Julia Munro: I believe that to be the same.

Mr. Dave Levac: I would move that as a friendly amendment to the subcommittee report that I just read.

The Chair (Mr. Shafiq Qaadri): I accept that. Could I just have some clarification of what we're saying, then? Ms. Broten, could you actually repeat it? We'll officially record it.

Ms. Laurel C. Broten: That we would add in a new number (9) and that all parties would be required to provide their written recommendations with respect to any amendments to be received by Thursday, December 4 at 5 p.m.

The Chair (Mr. Shafiq Qaadri): Is that suitable to the committee? That's fine.

Are there any further questions or comments to discuss?

Ms. Andrea Horwath: Mr. Chair, I don't think you actually asked with enough time to speak. I wasn't able to attend the subcommittee meeting, as members would know. I'm just wondering, why is it Thursday and why not Friday for the amendments?

Ms. Laurel C. Broten: The discussions that ensued at subcommittee were that having one day allowed a com-

plete business day and a bit for the parties to examine each other's proposed clause-by-clause amendments. If it was the end of business on the Friday and we were meeting for clause-by-clause at 2:30 on the Monday, it only gave a half day for review of those proposed amendments.

Ms. Andrea Horwath: So your suggestion is by 5 o'clock on the Thursday—

Ms. Laurel C. Broten: Thursday, December 4, giving each party the Friday and the morning of the Monday to review each other's proposed amendments.

Ms. Andrea Horwath: Fine.

The Chair (Mr. Shafiq Qaadri): Any further questions or comments? I seek permission from the committee to adopt the minutes of the subcommittee meeting, as amended. Those in favour? Thank you.

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.

MINISTRY OF CHILDREN AND YOUTH SERVICES

The Chair (Mr. Shafiq Qaadri): We'll now proceed to the substantive presentations. For the information of all our committee presenters, people will have either 10 or 20 minutes in which to present, depending upon whether they are presenting on behalf of a specific organization or in their individual capacity. The time limits will be strictly enforced.

Now we'll move to our first presenter. The committee is privileged to have, and welcomes, the Honourable Deb Matthews, the Minister of Children and Youth Services. Welcome, Minister Matthews, and as you are seated, we'll offer you 20 minutes in which to make your combined presentation, and of course any questions or comments and cross-examinations remaining in those 20 minutes will be distributed evenly amongst the parties. We'll let you begin now.

Hon. Deborah Matthews: I have to tell you that this is the first time that I have sat in this particular seat, but I've spent many happy hours as a member of different committees.

I'm very pleased to be here today to speak in support of Bill 103, the Child and Family Services Statute Law Amendment Act, 2008, which I introduced on September 29. This bill brings together two existing pieces of legislation that deal with Ontario's youth justice system: The first is the Child and Family Services Act, which governs young offenders between the ages of 12 and 15; the second is the Ministry of Correctional Services Act, which covers young people aged 16 and 17 when an offence is committed.

Bill 103 is designed to create a single legislative framework for all youth in conflict with the law between the ages of 12 and 17. It will complete our efforts to create a single, dedicated youth justice system in Ontario. From the outset, our goal as a government in establishing this system has been twofold.

First, we are always aware that the safety and security of our communities must come first, particularly when it comes to those who are in conflict with the law, no matter what their age. For this reason, we're using a number of tools, including this legislation, to ensure that young people who commit criminal offences will face the consequences of their actions. Indeed, several of the amendments outlined in Bill 103 actually make older youth more accountable.

For example, our proposed legislation provides decision-makers with greater discretion in determining the level of detention for youth in custody. This is in line with the proposal from the federal government to broaden the possibility to detain a young person who represents a danger to the public. Bill 103 will also give service providers additional powers to deal with contraband items and to protect all staff and clients at youth service facilities.

Our second goal with this legislation and the transformation of our youth justice system is to create a justice system that provides young people with supports and services that will challenge them to reject crime and violence and become productive members of our society. As part of this, we've constructed, and are continuing to build, new facilities that will house youth in conflict with the law and are designed to specifically meet their unique needs. We've put in place a wide range of alternative-to-custody programs that are helping young people to make the right choice, because we know that when we help to steer a young person away from making the wrong choices, we lessen the likelihood that they will reoffend. And every time we prevent a young person from reoffending, we've not only prevented a crime, but we've also put them on the path to fulfilling their dreams and strengthening our society.

This legislation strikes the right balance between the need to provide rehabilitation for young people in conflict with the law and the obligation to protect our society from those who would persist in committing criminal activities.

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After studying this issue of youth crime and seeking the advice of experts in this field, we know that youth between the ages of 12 and 17 in custody or detention have very different needs from adults in custody. In the past, many young people who had been found guilty and sentenced to time in custody were held in special wings of existing adult institutions. Clearly, this situation was not in the best interests of the young people involved, and

it certainly was not helping the youth justice system workers in their efforts to persuade these young people to turn away from crime.

That's why our government will remove all young people in custody between the ages of 12 and 17 from adult correctional institutions by April 1 of next year. To meet this goal, we're funding the construction of new youth justice centres in communities across the province. These are state-of-the-art facilities offering on-site education and rehabilitation programs. These programs are crucial because they offer opportunities to young people to learn new skills, develop their minds and bodies and become productive members of our society.

Last July, a number of my colleagues were on hand for the official opening of the new youth justice centre, the Donald Doucet centre in Sault Ste. Marie. This facility is named after Senior Constable Donald Doucet, a veteran of the Sault Ste. Marie police department who served as a role model and mentor for young people in the community. Tragically, he died in the line of duty in May 2006.

The centre provides secure custody for 16 young men and women who are in conflict with the law. It offers educational and rehabilitation facilities that are provided by a dedicated team of 30 staff and support workers. During the construction phase, the new centre provided more than 130 jobs and, by using local resources, will provide both short- and long-term financial benefits to the community.

At this time, similar facilities are being built in Brampton, Thunder Bay and Fort Frances, and the William E. Hay youth justice centre in Ottawa has been expanded to meet the needs of youth in eastern Ontario. For many young people, these youth justice facilities represent their best chance of breaking the cycle of violence that has characterized their lives since childhood. These facilities provide an environment where young people are expected to live by a strict set of rules and where they will face the consequences if they fail to live up to them. At the same time, they're treated with dignity and respect by the staff, who help them learn new skills and offer guidance on how they can turn their lives around to help themselves, their families and their communities.

Families play a major role in the rehabilitation process, and by locating these youth justice facilities in communities across the province, family members can stay in closer contact with young people in custody and help ease their way back into a more normal life once they are released. That's an important consideration when it comes to helping to prevent young offenders from possibly slipping back into the patterns that originally brought them into conflict with the law.

Our young people are our province's most important resource. No matter where they live, they must be given opportunities to achieve their goals and to become the leaders of a new generation. Our government is committed to doing all we can to help make this happen. We've implemented the Ontario child benefit to provide support for low-income families with children. When fully implemented in 2011, more than 600,000 low-income families will be eligible to receive as much as $1,100 a year for each child. It could be used to meet child care costs or to help ensure that children are able to take part in after-school or weekend activities.

The youth opportunities strategy offers thousands of young people across the province the chance to get on-the-job training in a wide range of careers, including law enforcement. At a time when our long-term economic future will require thousands of skilled workers to replace aging baby boomers, this strategy benefits the young trainee right now and will provide further benefits to our economy in the time to come.

Members of the committee, we know that the vast majority of Ontario's youth aged 12 to 17 will never come into conflict with the law, but for those who do, we are taking the steps to ensure that they will face the consequences of their actions. At the same time, we're offering support and training to those young people who genuinely wish to move forward with their lives and become productive citizens. For those who pose a threat to our society, we're taking action to ensure they cannot harm themselves or others. But to make our efforts in these areas as effective as possible, we must complete the task of creating a separate, stand-alone youth justice system in this province.

Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Minister Matthews. You've left a generous amount of time for each party, about three to four minutes, beginning with the PC side. Mrs. Munro.

Mrs. Julia Munro: I wanted to just ask you a question that comes out of the Roots of Youth Violence material that we received a couple of weeks ago. In there, the authors suggest that out of several—but the first two they mention are poverty and racism. I wondered whether or not, in the distribution of these facilities across the province, you have taken into consideration either of those two principles of Roots of Youth Violence.

Hon. Deborah Matthews: I wonder if you could expand on that question a little bit. I'm not sure I get it.

Mrs. Julia Munro: You mentioned the size of these facilities and things like that. I'm just asking whether or not those principles have been part of the decision in determining where your facilities might be.

Hon. Deborah Matthews: I do have people from my ministry here if you want to hear more, but let me give you an example of where we really have tried to build facilities that create a space that will facilitate the rehabilitation of kids.

The facility in Fort Frances is designed especially for aboriginal kids. The design was developed in consultation with the aboriginal community. The design is quite beautiful. There's a teepee, so there's a circle place where kids in that facility will be able to build on their traditions from their community. That is an example of how we really are trying to build facilities that respond to the challenges that kids in custody are facing.

Mrs. Julia Munro: You mentioned the one in Fort Frances. One of the things that I would ask you to comment on is the question of what kind of specifics in terms of urban youth violence you would have considered in making those locations available for these facilities.

Hon. Deborah Matthews: I want to take this opportunity to thank Roy McMurtry and Alvin Curling for their truly remarkable piece of work. I actually met with them this morning to talk about moving the issues that they raised forward. I think they have made an enormous contribution. One of the things, of course, that they say is that there are several intertwined roots of youth violence, one of those being poverty, one of those being racism.

Our ministry is very committed—in fact, internationally recognized as a youth justice system that really responds to the research that is available on this topic.

One of the things that we are doing to respond to some concerns is, as we recruit the staff at the Roy McMurtry centre in Brampton, we will be really aware of the diversity of our staff—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Thank you, Mrs. Munro.

Ms. Horwath.

Ms. Andrea Horwath: I'd like the minister to outline the consultation process that she undertook with youth in the preparation of this particular piece of legislation.

Hon. Deborah Matthews: This particular piece of legislation, as I think everyone on the committee is aware, is largely an administrative piece of legislation. It brings together two pieces of legislation so that all youth in this province between the ages of 12 and 17 are brought in under one piece of legislation.

We do consult with youth on aspects of our programming. There was an issue about some gender-specific programming that we invited kids to participate in, in terms of what programs are offered. We do engage the youth in the facilities to tell us what skills they would like to develop.

When it comes to this particular piece of legislation, which is largely administrative in nature, we did not specifically consult on it.

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Ms. Andrea Horwath: Is there some type of road map that you have or some kind of document that leads you to make a decision on which pieces of legislation you think you should have a voice on and which pieces you don't? How do you make these judgments or these decisions around when it's appropriate to consult youth in the legislation that you're drafting that has to do with them, or is the answer never? I'm just—

Hon. Deborah Matthews: No, the answer definitely is not never. I am a huge advocate of youth engagement and listening to the voices of the people who are most directly affected by the legislation. For example, the work that we're doing on crown wards, who are widely overrepresented in our youth justice facilities, is very much informed by engagement of kids who are, in fact, wards of the crown. So we are conscious of the importance of engaging youth. I think we can do a lot better. It's one of the things that we simply must continue to do more of—consulting with youth—and it's an area that my ministry is very interested in.

Ms. Andrea Horwath: Can I ask to the minister, at what point in the process of drafting this legislation that you call administrative did you consult with the child and youth advocate's office?

Hon. Deborah Matthews: The child and youth advocate—maybe I could have a little help on this. I think it was in the summertime that the advocate was briefed—

The Chair (Mr. Shafiq Qaadri): You have about 30 seconds.

Hon. Deborah Matthews: Okay, sorry. The advocate has been briefed twice. The—

Ms. Andrea Horwath: Mr. Chairman, if I can, I was asking specifically at what point in the process of the drafting of this legislation did the minister confer with, consult with or bring in for consultation the child advocate's office.

Hon. Deborah Matthews: I do not have that information right now, but I will undertake to get it to you.

Ms. Andrea Horwath: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. To the government side. Ms. Broten.

Ms. Laurel C. Broten: I think that on our side of the table, perhaps, we'll try to help the committee get back on the timeliness of our long schedule today and we will not ask the minister any questions other than say thank you for attending today.

The Chair (Mr. Shafiq Qaadri): Thank you as well, Minister Matthews, for your presence and deputation.

OFFICE OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, who is Mr. Irwin Elman from the Office of the Provincial Advocate for Children and Youth. Welcome, Mr. Elman. As you've seen, the protocol is you have 20 minutes in which to make your presentation, beginning now.

Mr. Irwin Elman: Thank you for having me here. I am going to give my submission on Bill 103. I'm going to read some of my remarks, because I have a little time and I don't want to ramble, and I think what I have to say may be of importance to you.

First of all, let me make a few general comments. It refers directly to the last question that was asked. The first is that Bill 103 was presented to our office only as a piece of legislation created to address "housekeeping issues," and that was by the ministry. On the face of it, that something like this would be required seemed logical. After all, there are two ministries, two pieces of legislation and two sets of policies involved in the transfer of all youth justice services to the Ministry of Children and Youth Services. However, as I read Bill 103 closely, I realized that the proposed changes were very much more than housekeeping.

On the subject of reading the bill: I must say it took a while before I had a chance to do so. The first reading of the bill was September 29, 2008. I attended a briefing with senior representatives of the ministry on September 30, and I received what is called a presentation deck—I have it with me. A presentation deck, for those who are unfamiliar, is a copy of a PowerPoint that talks about the bill. Some have said that our office was consulted about the bill. In fact, in the PowerPoint presentation that I received, our office's name was there as being consulted. I was never consulted. I checked with the two advocates previous to me and they were never consulted. I think the ministry would agree that, to the extent this is true, that perhaps what we could figure out is the only consultation any member of our office recalled was participating in a committee back in 2003 or 2004 that focused on secure isolation. I think the ministry would agree that if this was the extent of their consultation with us, it wasn't substantial. Nevertheless, I want to make it clear that the forerunner to our office, the Office of Child and Family Service Advocacy, did not then nor does our office now support the ministry's approach to the use of secure isolation for young people over the age of 16, but I'll get back to that later.

During the initial briefing on Bill 103, I requested a copy of the bill so we could see exactly what the government was proposing. This request was agreed to, but we never received a copy of the bill from the ministry. We did manage to obtain one and, as the minister knows, I was astonished to discover that not only did Bill 103 propose changes to the CFSA, it also proposed changes to what we call our act, the Provincial Advocate for Children and Youth Act.

First of all, it is not polite to change legislation with respect to an office of the Legislature without the office's consent. Secondly, what might seem like minor changes to outsiders may be major to those who work under the legislation or those whom the legislation affects. Thirdly, sometimes changes that are presented as minor aren't really minor at all.

When I was briefed—I want to make this clear because it's a very important point—I was not told that the legislation that governs my office was going to be amended. Not one word. It amounted, to me, to somebody coming into my house, rearranging the furniture, even if they thought it was for the best, and not telling me, not gaining my permission, not telling me even after the fact. I'm going to come home, see that my furniture was changed and say, "Oh, there it goes. It was just minor housekeeping." It's not respectful and it's not okay.

I would like to turn to some of the proposed amendments to the bill, and I'm going to get back to our act in a minute. Amendments that are masquerading as housekeeping but are really quite serious are subsections 93(2) and (5), which relate to secure detention and open detention. For most of the life of the CFSA and youth justice, the young offenders section of the Ministry of Correctional Services Act—the default position for young people who were denied bail was that they were to be held in open detention unless certain criteria were met. This is what the law said, and this is what happened for youth who were being dealt with under the CFSA. I want to make sure it is understood that what was said about open detention in both pieces of legislation was identical. Unfortunately, the practice was much different. This difference was a focus of attention for the judiciary—the advocate's office, and ended up in a Toronto Youth Assessment Centre inquest relating to a young person by the name of D. M.

There are now additional provisions that make it even more difficult for a young person to be placed in open detention. We have not been made aware of any reason that this would be necessary, either for youth under 16 or the older youth to whom the Ministry of Correctional Services Act previously applied. This is why I say this amendment is not simply about housekeeping.

The inspections and investigations, subsection 98.1(2): We support this amendment. I think it's important to make clear that the ministry should appoint a person to conduct an investigation in any youth justice setting, whether it is one that is directly operated by the government or a facility that is privately operated by a transfer payment agency.

Having said this, I think the ministry needs to go further. When young people make allegations of harm or mistreatment in a youth justice facility, indeed in any residence or resource for children or young people, we need to be assured that the matter was taken seriously and fully investigated and that if allegations were founded, steps have been taken to protect the young person who raised the complaint and all other young people who might be affected.

In July this year, my office received a call from a young person who allegedly had been assaulted by guards at a youth justice facility. The advocates assigned requested that the matter be investigated and that our office receive a copy of the investigation report and photographs of injuries. This material has been repeatedly requested for over four months, and we still have not received it. Now, it could be that the investigation into this case was adequate and thorough, but because of the stonewalling, it looks like there is something to hide. This characterization may be unfair, but it's often the end result when processes and investigations are not transparent.

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Earlier this year, another young person died in custody. I think it is important to have a full account of what happened in that situation. One way of finding out what happened is through an investigation report. The second is through an inquest. It often takes many months for an inquest. I do not think we should have to wait that long to discover what the matter was and that it is fully investigated. With the amendment to the CFSA that is in question now, I would request that members of the committee consider adding a clause that empowers the provincial advocate to receive any investigation report upon his or her request.

I have a number of other things to comment on, in particular secure isolation. I have a paper that I will leave for the committee, but I want to talk about our act before my time is up, and leave time for questions.

Bill 103 proposes changes to the act that mandates the work of the provincial advocate's office. I strongly believe that any changes to this legislation need to be approved by the office. However, given that the act has been opened as a result of Bill 103, I would suggest two amendments that could be appropriate. We can make these amendments now. If the committee feels it is not within their scope, they can carve off the piece of Bill 103 that relates to our office and create another act that amends our office. But I don't think this committee should make amendments to our act without fully consulting with our office. I think it's improper.

The first amendment I would suggest is the definition of "client group." The bill proposes to remove the term "young people in custody" from the Provincial Advocate for Children and Youth Act. My office prefers to have special emphasis placed on the fact that young people involved in the youth justice system are entitled to assistance from our office. We believe that the problem with the amendment could be rectified if the proposed amendment, 28(2) were to include "young people who are being dealt with under the Youth Criminal Justice Act," in addition to what is currently being proposed.

In September of this year, I met with two assistant deputy ministers and requested, among other things, a list of all the licensed group homes in the province. I still have not received this list, nor have I been able to obtain child fatality death reports, investigation reports or serious occurrence reports. As I have already mentioned, there was one investigation report I have asked for repeatedly over the past four months. Unfortunately, I have had to take the step of pursuing this matter in court. This will cost the taxpayers money, but more than that, it comes at a risk to the young person, who advised that retaliation had been threatened in the event the young person chose to pursue the request for the investigation report. This young person chose to go ahead in spite of the risk.

I am impressed by the bravery of this youth, but I think we all know there was no need for this situation to go this far. The ability of the provincial advocate to get answers in response to a concern about the safety and well-being of young people should not depend on the courage of the young person who makes a complaint or the depth of taxpayers' pockets.

I want to talk about process and content, because I fully believe and have explained to the minister, and perhaps to others here, that process is often as important as content. For the last few months, I have been through a Snakes and Ladders game with the ministry, parrying and thrusting, trying to get questions answered, and not only not getting information I've requested, but simply not getting answers about what information, from their perspective, I am able to obtain. I am asking you to propose an amendment to the Provincial Advocate for Children and Youth Act—it's in our brief—that will give us the right to information we need. I'm telling you this about Bill 103, as a committee, because it's not about our office and the ministry; I fully believe it's about the young people we're all concerned about.

I've been cautioned about making this argument, but I'm going to make it anyway. In my 25-plus years working in child welfare, I knew and learned full well that in families of abuse, silence and secrecy are hallmarks. I know from my practice and from the work we've done that if you break that silence and break that secrecy, you have a chance of helping young people who have been through horrific ordeals heal and fulfill the life plans they might be able to set for themselves—even begin to think they have some hope. What I'm offering this committee is to establish a process for both youth justice and child welfare that will allow that veil of secrecy, that culture of silence, to be lifted.

I would say to the minister, because I know the minister and the ministry are afraid to let the bad things out, that unless you let the bad things out, you can't allow the good things in. There will be—this is my experience—a balance between the good that comes out, the really good things that happen in child welfare, and the bad. But this game of trying to stonewall and obfuscate facts and prevent young people from speaking out and learning about the acts of violence that have happened against them has got to end, and I believe the committee has a chance to do that today. Thank you for hearing me.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about two minutes or so per side, beginning with Ms. Horwath.

Ms. Andrea Horwath: I want to ask you a question about your suggested recommendations. Will you be providing those in writing, in terms of the opportunity for us to perhaps put amendments that reflect those suggestions?

Mr. Irwin Elman: Yes.

Ms. Andrea Horwath: That's great. The experience you've had—can I ask how long you have been the advocate, Mr. Elman?

Mr. Irwin Elman: Three and a half months.

Ms. Andrea Horwath: The minister was mentioning in scrum today that there are protocols that have to be put in place—something of that nature—in order to share information. Could you tell this committee whether you think there are protocols that need to be put in place around the sharing of information?

Mr. Irwin Elman: There are many people in the ministry, and I'm sure they need to figure out how to get me the information when I ask for it. That's the protocol that, in my opinion, needs to be put in place. I have been, and continue to be, respectful in my relations with all ministries in asking for information, but I don't believe there is anything more than telling me who the right person to ask is and telling me or providing me with the information I request—that's the protocol that needs to exist.

Ms. Andrea Horwath: In your three and a half months as the permanent child advocate for the province

of Ontario, would you say you have had a cooperative response from the ministry in your attempts to build this independent office and provide resources for young people and children?

Mr. Irwin Elman: I would say that, on the surface, for sure, we're building a relationship with members on all sides of the House in the Legislature and, I would say, struggling to build working relationships within the ministry itself. Has it been cooperative? It's hard to tell. I'm three and a half months in, and it's hard to tell what is smoke and mirrors and what isn't. I will continue to be who I am: I will continue to represent the young people and children I have been charged to represent, and I will be operating with integrity, respect, excellence and accountability. I expect that the ministry and the minister will do the same, and I have been holding them—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath. We'll move to the government side. Ms. Broten.

Ms. Laurel C. Broten: I want to say, right at the outset, that I hear in the words you are using the voice of an advocate, and I commend you on that. I do want to say that I'm concerned about the characterization of the events that have transpired. I think that it's important, as legislators who are charged with ensuring that a variety of rights are protected and that we move forward in a thoughtful fashion, to put out the understanding and appreciation that the Information and Privacy Commissioner does have to be engaged, and has been engaged in the past, in discussions that are taking place.

I just want to confirm that it's my information that on November 5 a request was made for information from the ministry, and that the ministry has been working to compile that information, aligning with the privacy requirements of the YCJ and of FIPPA, and that you would also agree that it is critical that the privacy of the youth, who needs to be involved and to provide consent to the disclosure of that information, needs to be protected as we move forward.

Mr. Irwin Elman: Let me tell you that on July 24, we made the initial request for the investigation report I'm speaking about. I've already mentioned that we would never do so unless the young person suggested we do that. The ministry was well aware of that. Sometime after July 24, we received a response with an investigation summary report, which is really almost inconsequential. That was well before November 5. I can't tell you—oh, I could; it's in our briefing to the clerk—the number of e-mails, the number of letters, the number of phone calls, the number of protocol meetings that I went to.

I'm very angry because this involved a young person who was being hurt.

1510

Ms. Laurel C. Broten: Has this protocol been signed and agreed to at this point?

Mr. Irwin Elman: Let me speak to that. Before we got to the time when somebody said, "Well, now we can't give you the information until you meet about a protocol," I went on good faith to meet about a protocol. I started asking the same questions: What is the information we're going to receive—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, with respect.

Mrs. Munro.

Mrs. Julia Munro: I just want to pick up on this because I think all of us are absolutely shocked by the testimony that you've been able to provide us with today—as well as indicating to us last week that you felt it necessary to actually go to court. I say that particularly because the previous minister, on third reading of Bill 165, stated:

"We recognize that the independent advocate needs to be able to have the means by which to access children and youth and their records in order to provide appropriate advocacy....

"We carefully drafted the access-to-records provisions of the legislation in consultation with the Information and Privacy Commissioner to ensure that the privacy and other legal rights of the child are protected. The legislation provides the advocate with access to a child or youth's private records, provided that the child or youth provides consent."

This sounds to me as if a protocol should have been in there at the very beginning when you first started this position that you now have.

Finally, she said, "The discretion to determine the child or youth's capacity to provide consent rests with the advocate."

Is this how you see your job?

Mr. Irwin Elman: Of course it is. The issue around the protocol, to me, is that it's not my protocol. I will ask for information, and the ministry will need a protocol in order to find a way to get me the information, even—and I'm aware of this—to say, "We're not giving it to you."

What I want to tell you is that I hadn't got any answer, even when I went to the final protocol meeting. I did say we would test it without prejudice: "In good faith we'll use it, because that's something you need us to use in order to facilitate getting us information." We did use it many times over. We still haven't gotten any information. I guess that's what you're referring to—November 5. But we were asking for this information a long time past.

I would have believed that the ministry should have been able to answer a question over three or four months. If they need to develop a protocol now in figuring out how to answer the question, do it.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Elman, for your presence and testimony on behalf of the Office of the Provincial Advocate for Children and Youth.

DAVID WITZEL

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, who comes to us by way of teleconference, Mr. David Witzel. Mr. Witzel, are you there?

Mr. David Witzel: Yes, I am. Thank you for inviting me.

The Chair (Mr. Shafiq Qaadri): That's great. I just invite you to speak up. As you may know, you have 10 minutes in which to make your presentation. I invite you to begin now.

Mr. David Witzel: I wish to thank everybody for accepting me.

First of all, dealing with Bill 103—before I get into it, the provincial advocate has already complained about not having the authority to do what he wants to do. The government isn't listening to him. On top of that, I was in the justice policy committee when the formation of the provincial advocate was a done deal. The only thing was, the provincial advocate can review and make recommendations, but he can't do a thing about having anything done with teeth, like the Ombudsman's office, which many of us suggested should get this. But the government of the day doesn't feel like giving the Ombudsman that role, because the Ombudsman's office might be able to delve into stuff that the government doesn't want to become public.

There is no oversight at all. All of this stuff that we're talking about or are going to be talking about right now—there is absolutely too much secrecy. The children's aid society and the Catholic Children's Aid Society, along with the Ministry of Children and Youth Services—there's too much secrecy there. There are absolutely no checks and balances within the children's aid society for us, the public. I am talking to you as a sexually and physically abused adult male survivor of childhood abuse, so I do know where I'm coming from because I've had to deal with these people. I'm watching kids getting killed and abused with nobody doing anything with the children's aid, which might well be part of the problem, because they didn't, in the case of Jeffrey Baldwin, check the records to find out that in fact the people they gave him to had already been tried and convicted of murdering their own little child and their children were seized, and yet he was put in their care.

Where are the checks and balances there and why aren't the children's aid societies of Ontario being investigated by the police? I understand there are protocols. Well, that's nice. Protocols, to me, mean, "I'll cover your ass if you cover mine." Excuse the language, but that's the way it is. Now, that is not right. There should be more that comes out to the public.

I'm just reading here about different things that have been repealed. It says in section 2 that the definition of "provincial director" in the Child and Family Services Act is repealed. Well, that's nice. We then go to—let's see. Just bear with me, people. Yes, we go to subsection 5(2) where it says, "A provincial director may detain a young person." Let me ask you, how can a provincial director detain anybody if that post has been repealed? I can't get through that one. I don't understand that at all.

We'll also go down now to 8. Just please bear with me. I'm just trying to get there. Okay, here we go. Sorry about that, folks. We're on to subsection 8(3), down to (a) first: "may be opened by the service provider or a member of the service provider's staff in the young person's presence and may be inspected for articles prohibited by the service provider." Well, it then goes down to (b), which says, "where the service provider believes on reasonable grounds that the contents of the written communication may cause the child physical or emotional harm." Well, I don't know about you, but I don't know until I open a piece of mail what is in it, so what's this "reasonable grounds" thing? I'd surely like to know the definition of that, and this is all done once again in secrecy.

We go down to section 8, under 4(c). We now go into client-solicitor—"shall not be examined or read under clause (b) if it is to or from the young person's solicitor, unless there are reasonable and probable grounds to believe that it contains material that is not privileged as a solicitor-client communication." Once again, how do you know that until you open it? That's giving some people an awful lot of power. We're supposed to be a democracy, but from the way I'm looking at it, whether it's municipal, provincial or federal, it seems more like a dictatorship than a democracy.

Also, what are the reasonable grounds, again, that they're talking about? Reasonable grounds—that's great. What are they? They seem to go to great lengths to talk about them, but we don't know what they are.

1520

We're going to go down to 9(2). Once again, we have "reasonable grounds"—no description of what "reasonable grounds" are. We go down to, let's see—just bear with me. "Subject to subsection (9), 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." Let me put it to you this way: What happens if there are 20 kids? Are you going to have 20 people watching them? Or are we going to go the way of cameras so that we can take pictures of people? Unfortunately, the damage might well already have been done. We see that on the streets quite often. They take pictures of things, but unfortunately, those people they took pictures of are dead or seriously injured.

Again, subsection (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." Do we have psychics on board here now, too? That's the way I read it, and I'm sure that's the way a lot of people read it.

We'll drop on down to subsection (8). No person can exceed eight hours in a 24-hour day, or 24 hours in a total of a week. Then, we go down to subsection (9). Why can they ignore—let's see, where is it? Sorry about this, folks. Just bear with me. Okay, here we are: "A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is aged 16 years or older and who is held in a place of secure custody or of secure temporary detention, but a service

provider shall comply with the prescribed standards and procedures in respect of such young persons who are held in such places." Are we discriminating now again? A person who needs care needs care, and it doesn't matter what their age is—in that age bracket, I would suggest. But once again, secrecy seems to be the law of the land around this joint.

I'll go again to the provincial advocate now. I feel sorry for this gentleman because his hands are tied and I wish they weren't tied like they are. In section 30 of the bill, the provincial advocate can "(f) provide advice and make recommendations...." Again, that's convenient for the government of the day, the children's aid society and the Ministry of Children and Youth to give this power of review and make recommendations, which means squat. You can review it, you can make recommendations, but we don't have to do a thing about it. That man's hands, even if in the best of his—

The Chair (Mr. Shafiq Qaadri): Mr. Witzel, first of all, I'd like to intervene, with respect. I'll just inform you that your 10 minutes' time for presentation has now been consumed. We thank you for your presence with us by teleconference and for your deputation. As you know, you're welcome to submit any further comments in writing to the clerk of the committee. Thank you very much, once again, on behalf of the committee.

Mr. David Witzel: Well, sir, may I thank you very kindly, and if—

DEFENCE FOR CHILDREN INTERNATIONAL-CANADA

The Chair (Mr. Shafiq Qaadri): We now move ahead to our next presenter, from the Defence for Children International-Canada organization, vice-president Matthew Geigen-Miller and executive director Les Horne. Gentlemen, welcome. As you've seen, you've 20 minutes in which to make your presentation. I'd invite you to please begin now.

Mr. Les Horne: I am Les Horne. I just came here to provide a quick framework for what DCI can offer to the committee. I am history. History is what puts things in proportion to each other. The history of juvenile justice is one of unbalanced ideas and pet enthusiasms that go out of fashion like ice cream flavours. The trouble with juvenile justice is, when you make mistakes, like, I think, in this bill, you can't undo them very easily without hurting a lot of people.

Before I came to Canada, I took part in a study run by the George V Trust on the issues of youth development and socialization and read the reports of two Canadian studies on the treatment of young offenders. I was encouraged. I think it was called the Fauteux report. I was looking forward to work in Canada. The first shock of cold water came when I was in an office in the maximum security school in Guelph and saw a little boy, just 15 at that time, shuffle in in leg irons and handcuffs between two prison officers from Kingston. His name was Steven Truscott, and his sentence to hang by the neck until he was dead had just been reprieved. Steven became a friend of mine. He was gentle and caring and wrongly convicted, but if Diefenbaker hadn't acted, he'd be long dead. We don't undo mistakes in this field easily.

That was in 1959. I was back to that building years later as the child advocate for the province when a boy named James Lonnee died a miserable death at the hands of his cellmate after days of abuse that were of concern to the staff, although nothing was done that saved him. That was one of a series of inquests which pointed at the destructive nature of the quality of care for young people in Ontario.

The year 1979 was designated by the United Nations as the International Year of the Child. It brought to light disturbing indications of the suffering of children throughout the world. The international year also marked the beginning of efforts to draft an international convention to lay the foundations for tackling these problems. Paradoxically, at this time, when children's rights issues were at last coming onto the world agenda, there was no international organization with the specific aim of promoting and protecting the rights of the child. Defence for Children International was set up precisely to fill this gap.

DCI has consultative status with ECOSOC, the United Nations, UNICEF and the Council of Europe. The International Secretariat is responsible for coordinating the activities of the movement and taking initiatives at the international level.

A US study of care facilities over the border recommended: "In addressing these issues it would be helpful for the United States to ratify the" convention "and commit to eliminating abuse in residential treatment facilities through better monitoring of the industry. Further, the establishment of independent complaints mechanisms for young people to report abuse without repercussion would allow children's voices to be heard while working to address the impunity that has continued unabated in this industry." But Canada has both ratified the convention and independent complaint mechanisms. DCI will say that in this bill, there's a prevailing disrespect for the convention and little desire to hear the voice of children.

Now I'll pass it over to Matt Geigen-Miller.

Mr. Matthew Geigen-Miller: Thank you, Les. I'm going to speak to our paper. We've submitted a position paper, which should have just been distributed to the committee members.

Mr. Chairman, honourable members of this committee, thank you very much for giving us the opportunity to appear before you and speak to Bill 103. This paper is detailed. I'm not going to read it. My remarks will focus on how DCI Canada is framing Bill 103 and a few specifics about the bill. I'm going to rush through in the hopes that we have time for questions, because there are many questions that we should be asking about Bill 103.

I want to start by saying that we disagree that this is housekeeping bill. We also disagree with the minister's comment that this bill strikes the right balance—and I say

this with respect to the minister; I don't doubt her commitment to children and youth in this province, nor do I doubt the commitments of the members of this committee. But in my view, this bill doesn't strike the right balance; it strikes out.

First of all, we support the unification of the youth justice system in Ontario and we have been calling for it for 10 years, since the James Lonnee inquest, which called for a single ministry providing all children and youth services in Ontario. The policy in Ontario of having two youth justice systems, one based on adult correctional practice and one that was youth-focused, is out of date, discredited and harmful to young people. It also does not make communities safe. Instead, it puts kids in danger.

We say that the project of finally unifying Ontario's youth justice system is only a good idea if it preserves the best, if it preserves the youth-focused system and brings the ineffective correctional-based system up to the higher standards of the youth-focused system. This bill does the opposite: It imports the adult correctional standards into the Child and Family Services Act. This is bad legislation, and we oppose its passage.

I'm going to quickly walk through a few of the provisions of the bill and a few of our comments, in the order that they appear in our paper. First of all, with respect to section 8, there are three things we have to say. First, it expands the scope of communications that can be opened and read by staff. It expands this from mail to any form of electronic communication, and this expansion applies to all children in care. It applies to foster kids, kids in group homes, kids in every form of treatment centre. Staff now have the power to seize things like cellphones and computers and read the written communications in them. This is not housekeeping; this is a substantive and serious change to the rights of children in care and to the protections available to them.

1530

This clause also imports into the CFSA standards from the Ministry of Correctional Services Act with regard to opening and reading of mail.

Finally, there's an attack on solicitor-client privilege, which we object to. It gives front-line staff in open-custody group homes and secure-custody facilities the power to open and read letters from lawyers if they believe, on reasonable and probable grounds, that there are materials in the letter that are not privileged.

The problem I have with this is, I would be very interested to know how much front-line staff in group homes and youth justice correctional facilities know about reasonable and probable grounds and the exact scope and content of solicitor-client privilege. My guess is that they don't know very much.

There is a new power to restrict visits in this bill which never existed before, in either the phase 1 or phase 2 system. We note that it has never existed before, and there haven't been any disasters yet.

We're particularly concerned about the power to terminate visits during an emergency condition. We note that the Provincial Advocate for Children and Youth will quite often need to access a facility the most during an emergency condition, and historically, we have seen this is true in the event of some sort of incident or disorder. We don't have "emergency condition" defined, so an emergency condition may be an incident that lasts an hour, but it might be declared to exist for a week, and that's unacceptable. The advocate needs to be able to go into a facility if there's a problem there—more so, not less so.

In regard to the provisions around level of detention, we will simply say that Bill 103 does two things. It preserves the charade that open detention is the default form of detention in Ontario. It preserves a presumption that open detention be used for all young people in pretrial detention, but it also increases the number of grounds upon which a young person can be placed in secure detention. So it preserves the presumption of open detention on one hand while undermining it on the other.

Notably, it creates a new ground for placing a young person in secure detention that uses the exact same criteria as the grounds for denying someone bail under subsection 515(10) of the Criminal Code. In other words, if a person has been denied bail by a justice of the peace in a bail hearing, they're automatically eligible for secure custody under this bill.

In regard to inspections, we're pleased to see the beginning of language describing inspections. It's a good start, but this proposal is inadequate. There are international standards dealing with inspections of juvenile justice facilities. They are excerpted on the last page of our paper. We recommend strengthening the inspection provisions, including measures that will bring the inspections in line with international standards.

Finally, in regard to the advocate's access to records, this is an issue that we brought up when Bill 165, creating the Provincial Advocate for Children and Youth, was before the Legislature. We recommended a broad power for the advocate to access records in the possession of service providers, agencies and so on. We renew that call, and we support the advocate's request for an amendment that would give it this power.

That's the road map of what is in this paper. I invite your questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you very much. About three-minutes-plus per side, beginning with Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you for your comments and your presentation today.

I'm looking at the first two recommendations that you have brought forward, in terms of your summary of recommendations. You refer to clause 8, which is about the privacy of written and electronic communications.

The legislation specifically says "may" be opened, so it doesn't say it shall be opened; it may be opened. In my community, we've had particular problems with things such as cyber-bullying. I would think that in this day and age, we would want to protect all children from such things. If you were to give access to, say, gang leaders

who were to maybe try to silence a particular youth, or something like that—there needs to be some reasonable amount of opportunity to help children work against that, and to keep them safe from that kind of thing. This is a different age than we've ever experienced in the past. Like I say, coming out of a community where a young man committed suicide because of cyber-bullying, I think this type of sensitivity is very important. So I'd like to hear your comments on that particular thing.

Mr. Matthew Geigen-Miller: Thank you very much for your question.

I agree with you that there is some degree of interception that may be permitted. Obviously, cyber-bullying is a much broader issue than communications coming to and from a young person in a custody facility. In regard to young people in a custody facility, what we have suggested is that one measure be kept in place, and that is the ability to intercept communications to or from a young person in custody where there are reasonable grounds to believe that the content contains communications that are prohibited under the federal act or by court order. This would allow staff to intercept a letter or an e-mail or what have you—presuming they have a way of intercepting an e-mail—that is addressed to a witness or to a co-accused or any other person whom the person in custody is not permitted to communicate with by court order. Obviously, we don't want people to be allowed to intimidate witnesses or obstruct justice or collude with co-accused. That should be easy enough to do. It's different than opening the floodgates and saying that the staff should have an open door to seize all kinds of communications and read them, carte blanche. It's narrow, and it focuses on the community safety and administration of justice issue. That's what I think this committee should do: focus on not permitting a young person in custody to send or receive communications—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Now to Mr. Shurman.

Mr. Peter Shurman: Thank you for appearing here. I find your deputation very disturbing. When I couple it with what we've heard from the provincial advocate, it sounds to me like your description of the bill as a strike-out means—and I don't want to put words in your mouth; I want you to comment on this—that you think the wrong people or no people have been consulted and that we're doing children a disservice with a bill like this. Are you advocating starting again?

Mr. Matthew Geigen-Miller: First of all, yes. Second of all, this bill is the product, of course, of years of things like coroners' inquests, so in that sense there has been a lot of learning that appears to have gone into it. But in many cases, it claims to be implementing certain measures while also containing measures that completely undermine them.

I think the best way to find out the difference between what a bill claims to do and what it really does is through consultation. To my knowledge, there has not been significant consultation on this bill, certainly with effected young people.

Mr. Les Horne: And consultation with young people, too. I think that's a vital thing.

Mr. Peter Shurman: That was a question I wanted to ask, as well. I'm looking around this room, and there are not that many people here; there are no young people here. So I wonder what kind of consultation there has been.

There's not a member of provincial Parliament in our Legislature who doesn't get—I won't say "besieged," but sometimes it does go that high—requests on a constant basis from people who have an involvement with the youth justice system, whether they be youth or parents of youth. They talk about, most significantly, the lack of opportunity to communicate with the ministry. Now I hear that the provincial advocate can't communicate with the ministry either. Is that your experience?

Mr. Matthew Geigen-Miller: We're not going to speak for the provincial advocate—

Mr. Peter Shurman: No, I'm not asking you to do that. I'm asking you to speak for DCI.

Mr. Matthew Geigen-Miller: I should say that we do communicate with the ministry about issues from time to time, and every time we've ever corresponded with the ministry, we've received a reply. There have been times when it takes a while, and we understand that.

The issue for us is that there could have been a broader consultation around this bill. We didn't know we needed to communicate with the ministry before this bill was introduced, because there was no consultation process. So it's not that the ministry is ignoring us or not treating us with respect or with courtesy; it's just that we didn't know about it until it was introduced, and no one else did, obviously, because it wasn't public. There should be a process like that so that people can know there's an opportunity to comment.

Mr. Peter Shurman: Mr. Horne, a final question: You began with a reference to something about ice cream. Are you suggesting that we're dealing with the flavour of the day in terms of how we deal with our young people?

Mr. Les Horne: There is a real flavour of the day about juvenile justice legislation, yes.

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

Ms. Andrea Horwath: I just wanted to pick up on the idea that you have no problem communicating with the ministry; that they actually respond to you. That's good to hear.

I should start by thanking both of you for being here. You've done some great work, not only here today, but in previous pieces of legislation that governments brought forward that address issues of children and youth. Thank you for your involvement. It's extremely important.

1540

I asked the advocate earlier about the idea of protocols, the minister saying that protocols would need to be put in place so that they can provide information to the child advocate. Did you want to comment on that?

Mr. Matthew Geigen-Miller: Yes, I would. Presumably, the notion here is that we can't just hand over anything to the advocate because that would include materials that are confidential and so on, and what might the advocate do with those confidential materials? I just want to draw attention to sections 19 and 20 of the Provincial Advocate for Children and Youth Act, 2007. These are provisions that were written by the privacy commissioner and which are the most strict confidentiality provisions applying to any office of the Legislature in Ontario. The advocate does not have leeway to simply release information without the consent of those people involved. The notion that we have the consent of the privacy commissioner now to see what the advocate might be able to do with information they're given is nonsense because the government did consult with the privacy commissioner, and what we have, in the provincial legislation regarding the advocate, is exactly what the privacy commissioner recommended.

I appreciate that we want to put restrictions on abrogating solicitor-client privilege or cabinet secrets—no one's suggesting that, and perhaps there's a little bit more that can be done—but the fact of the matter is, the advocate should have access to virtually anything that's relevant to its functions, and then there are significant protections already in the act that would prevent the advocate from simply publishing or releasing confidential information without the consent of those affected.

Ms. Andrea Horwath: One other question. The discussion you started early on in your comments around the bill not being particularly helpful for young people, that it's actually going backwards—it's a strikeout, I think is what you said specifically. The minister keeps saying that this bill is going to provide young people with new supports and services and that it's going to provide them with assistance in getting out of the youth justice system. Could you comment on that, please?

Mr. Matthew Geigen-Miller: Bringing all of the youth justice services under the Child and Family Services Act and the Ministry of Children and Youth Services is a good thing; it's good policy. Generally speaking, it's great, and if that's what this bill was doing in effect, then we would completely—and it does do those things, but what it does also, as a compensating measure, is bring in a variety of provisions that import into the CFSA the old standards from the phase 2 correctional-based system, and that's our problem: It seems to be heavily slanted toward bringing in those correctional-based approaches. The reason for that is because we think there is still a belief in the government, in this province, that 16- and 17-year-olds do not have rights as children and should not be treated as young people. We believe that they should be, and if they are, we should have the standards, the processes and the practices that work. They're good ones; they're under the Child and Family Services Act and they should apply to everyone.

Ms. Andrea Horwath: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Horwath, and thank you, gentlemen, for your presentation on behalf of Defence for Children International-Canada.

YOUTH SERVICES BUREAU OF OTTAWA

The Chair (Mr. Shafiq Qaadri): We'll now welcome our next presenter, who will have 10 minutes in which to make her deputation, Ms. Natalie Ravera. Is Ms. Ravera present? If not, we'll now proceed to Mr. Alex Munter, the executive director of Youth Services Bureau of Ottawa.

Mr. Munter, welcome. You have 20 minutes in which to make your deputation, and I would invite you to begin now.

Mr. Alex Munter: Thank you very much, and greetings from Canada's capital. As somebody who grew up in Ottawa, it's not very often I can say I come to Toronto for some peace and calm. Our town is a bit electric at the moment.

Mr. Dave Levac: For the record.

Mr. Alex Munter: Thank you for this opportunity. I am here on behalf of the Youth Services Bureau of Ottawa to give you some insight as a service provider in terms of how this legislation fits the work that we do. What I'd like to do is tell you a little bit about the Youth Services Bureau, how our youth justice programs fit within our agency and why we support the general direction of this legislation, and that is to put youth justice under the umbrella of the Ministry of Children and Youth Services and under the framework of the Child and Family Services Act. What we try to do in our organization is the integration of services. I'm just going to talk to you a little bit about that because that's the context, that's the filter through which we have looked at this legislation.

First of all, it's important for you to understand our philosophy and what we believe. The core belief that we have, as an agency, is that no young person's life chances, no young person's future should be defined by an obstacle they have faced, by a struggle they have endured or by a single choice that they have made. That philosophy binds together our four different programs: employment, mental health, housing and youth justice, which we deliver at 20 locations across Ottawa to some 12,000 individuals per year. There's an interesting interplay between our programs, really, because three of our programs work really hard to prevent the fourth program from getting clients, and that's that the mandate in employment, in mental health, in housing and community services is in fact to prevent people from getting caught up in the catchment of our youth justice program.

Our agency was founded in 1960 and has always been involved, over nearly 50 years, with young offenders, but our programs in youth justice expanded dramatically in 1999, when the former government transferred the operations of the William E. Hay Centre in Ottawa to our agency.

The minister mentioned earlier some of the work being done in various communities across Ontario; ours

is one. Our facility is currently being expanded from 24 to 40 beds, in order that the youth unit at the adult detention centre can be closed by April 1. That is part of the rationale behind the legislation.

The director of that facility, a gentleman by the name of Gord Boyd who has worked in this field for a long time, has a great line that he uses that I think really describes what we try to do there and how he tries to lead his staff. He says: "Often, we don't do rehabilitation; we do habilitation." We're giving young people who are in our custody, through clinical programs, educational opportunities, recreation, social contact, and links with our other programs, the opportunity to succeed. At our agency, in any of our programs, where we see young people is at that fork in the road; that something has happened or a series of things have happened, and we have an opportunity to work with them so that they can succeed in that journey and take the path that will lead them to a better future. Within youth justice, our programs are secure and open custody and detention, community reintegration; we have a mental health court worker at the provincial courthouse and an anger management program.

What I'd like to do is just illustrate, through two examples, the way in which we try to make integration across these services work and why we think integration across these services is important. Just two short case studies: One, a young person presenting with a narcissistic personality disorder who was in secure detention on a number of charges. While with us, he became stable, began to interact with staff and peers in a pro-social way—on the streets, he had always been quite isolated and alienated. He began to go to school, succeed in school and, as he left, we worked to discharge him into our own community services to ensure that the success that he was having in the facility could be continued.

A second example: a youth who was charged with a federal offence, a first-time offender, who worked with our mental health court worker and who has gotten involved with recreational opportunities upon leaving our facility. We are working with his mother around crisis counselling and establishing a behaviour contract so she is able to hold him accountable while he lives back at home. We are working to get him into our housing program—we have three long-term apartment buildings—and we brought our employment workers in. He's been in a full-time job successfully now for three months, since just after Labour Day.

So what you see in those two case studies are examples of where we try to deploy resources across our agency and across programs to support young people when they're with us in the custody and detention part of our agency but, more importantly, so they are well-positioned to succeed in their lives and not return to visit us.

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I think that for us what is important about this legislation as a driving principle is that notion of integration, that notion of trying to put youth justice within that range of services and within that range of programs that speak to giving young people every possible success and giving young people who have faced those challenges and those struggles and who have made perhaps poor choices, an opportunity to succeed.

I'll end there, and I'm happy to answer questions if there are any.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Munter.

There's a generous amount of time, maybe about four minutes or so, beginning with Mrs. Munro.

Mrs. Julia Munro: Thank you for being here today. I just wanted to ask you a quick question with regard to the way in which this bill has been structured in terms of contemplating bringing people together from 12 to their 18th birthday. Do you see that as being something that is going to have any impact on the provision of services you provide? Do you anticipate any kind of change in regard to those people you serve?

Mr. Alex Munter: We are already starting to see—because the transfers are starting to happen out of the youth unit at the adult facility, we're starting to see older males. The issues are different, and we are developing our clinical programming. We've worked with the ministry to be able to have the resources to strengthen our clinical programming.

A big thrust of this is education, and we're blessed in partnership with our local school boards, to be able to work with them. Really, it's quite inspiring to see some of these kids who've really never succeeded in an academic environment be able to do well. But I would say that taking these older young offenders out of the adult system, out of that facility, putting them in our program, which is then connected to education, to employment, to mental health, to housing—all of that, I think, will really strengthen their odds of success.

Mrs. Julia Munro: Thank you very much.

Mr. Alex Munter: Thank you.

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

Ms. Andrea Horwath: I thank you for your presentation. It's very good to hear specifically from people in the field, if you will, who are providing services, and that's very helpful in terms of our insights.

One of the things that's come up—it came up from the child advocate and the previous presenter as well—is the issue of the interception of mail, particularly of mail from children and young people, pretty much the ability to open and read and intercept and keep mail from young people without them even knowing that that's being done or has been done. Is this something that you would think is a good practice or a practice that is supportable?

From my perspective, the reason I ask it is, as you describe your programs, they seem very respectful of the relationships with young people. They seem to build on creating relationships of greater trust and responsibility. The message that this bill tends to bring is quite the opposite from that in regard to mail. Could you comment on that a little bit?

Mr. Alex Munter: I would say a couple of things. First of all, I think the authority of opening mail is an important tool to ensure both community safety and the safety and security of the facility. We've talked a little bit about how we would apply this and how we would deal with this, and there are a couple of ways to do it. One would be to open the mail in the presence of the young person so that they know that it's happening. The other is to advise them that we would be interested in opening their mail, barring if there's a concern that there's something imminent in the package, but to say that it would be our intent to open the mail and give them the option that it be set aside, closed and that they don't have access to it or that they receive it once they leave. So I think there are ways. I understand why the provision's there. I think it is an important tool that will rarely be used. It's an important tool, however, for our folks to have.

On the other hand, I think there are ways to ensure, and it would certainly be our intent in our practices and our policies and procedures to do this in a way that is very transparent, that the young person is involved and is aware of how the rule is being applied.

Ms. Andrea Horwath: If we were to get the government to agree to an amendment that still allowed for mail to be opened, but built in some of the principles that you talked about, as opposed to leaving it wide open—you're going to be doing your implementation of this new legislation in the way that you've described, but there's nothing that says that any other facility or group home or anything at all is going to take that same kind of respectful view. Would it be problematic for you if an amendment was accepted by the government that built in some of the principles that you talked about?

Mr. Alex Munter: This is the kind of approach that we, again, within the framework of what the legislation is, have been contemplating. So, obviously, that is the direction that we're intending to head with it.

The Chair (Mr. Shafiq Qaadri): To the government side and Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you very much for attending today.

For clarification, I just want to read from the legislation on the issue of the opening of mail. Clause 8(3)(a) says that mail "may be opened by the service provider or a member of the service provider's staff in the child's presence...." So I think when you talked about that type of respect for the child and the youth, that is clearly stated in the legislation already.

I also want to comment on what you had said earlier about the forks in the road. Certainly, there are forks in the road all throughout life. We all have, at times, made a bad decision, but I think the earlier in life that those bad decisions come about, the more critical it is to make that turnaround and create an opportunity, rather than setting a path for lifelong problems.

I want to thank you very much for the work that you're doing. I think it works very well and is well integrated into the kinds of work that the Ministry of Children and Youth Services is mandated to do, as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Munter, for your deputation on behalf of the Youth Services Bureau of Ottawa.

JUSTICE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qaadri): Now we have a little juggling, as in some cancellations and teleconferencing and so on, so I'll ask on behalf of the committee, do we have Lee Ann Chapman from Justice for Children and Youth?

Ms. Lee Ann Chapman: Yes.

The Chair (Mr. Shafiq Qaadri): You're probably about 20 minutes ahead of schedule, but if you're ready, we'll invite you to please begin. Welcome. As you've seen, you have 20 minutes in which to make your presentation. Thank you for coming forward earlier. We invite you to begin now.

Ms. Lee Ann Chapman: I'm pleased to be here, first of all, because I've had a day of computer glitches—I will apologize, because when you received my copies, you received them at the last minute. I do apologize again, in advance, if there are any typos or any areas that are unclear.

First of all, I want to introduce our organization and let you know that I'm here as a lawyer from Justice for Children and Youth and that my representations here will be from a legal perspective and, most importantly, from a children's rights perspective.

For those of you who may not know, Justice for Children and Youth is a legal aid clinic. We're a specialty clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. We've been operating since 1978. We provide select representation to young people in the areas of child welfare law, criminal law, education law, mental health law, human rights law and income maintenance. Those are our main areas of law—but really it's direct representation to youth in all areas of the law that affect young people. We regularly prepare policy positions on issues relating to the legal practice as it applies to children's rights. We also conduct a large amount of test-case litigation. I'm hoping to come here today to put myself out of some work in the future by pointing out some problems that I see in the legislation, as it's now drafted.

Overall, I want to say that our organization applauds this legislation and the idea of bringing all children under the age of 18 years who are in custodial and detention facilities under the Ministry of Children and Youth Services. We're pleased to see this happen. We've been waiting for it since the implementation of the Youth Criminal Justice Act, and now we're happy to see that Ontario has followed suit. We believe it is appropriate to regard all children under the age of 18 as having the same rights.

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However, we do believe that there are some serious concerns in the bill, some issues that may have been overlooked, or some perhaps unintentional consequences.

Again, I caution, if some changes are not made, we see some impending constitutional challenges for the bill as it now stands.

In making our recommendations, I just want to quickly say that we're guided by the following principles: that all children and youth have the right to be valued and to be treated with respect and dignity under domestic law and under the UN Convention on the Rights of the Child, which Canada has ratified and Ontario has signed on to. Under that is the right of every child accused of or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights generally and the freedoms of others. These principles have been repeated in many international instruments. I want to remark again that under all of these international and domestic instruments, the age of the child is defined by being under the age of 18. That's consistent throughout. These children should be detained separately from adults and, most comprehensively, nations should develop a separate juvenile justice system that emphasizes the well-being of the juvenile.

Our overarching concern is that some of the amendments here, in some areas, substantively incorporate some ideas from the adult system, rather than continue to view children as separate from adults. I know that's unintended, and you may be surprised to hear me say that because I don't think that is the intention of this legislation at all, but I think it happens in some areas.

The UN Convention on the Rights of the Child, together with domestic legislation and, most recently, in the Supreme Court decision of R. v. D.B., constitute legal recognition of the principle of separation of young persons and adults in the criminal justice system, from a human rights and a constitutional perspective.

First of all, I'm sure you've had this pointed out, but as a lawyer I have to be nitpicky and I just have to point out to you that often there are references to the Young Offenders Act—I hope that will be changed—rather than the Youth Criminal Justice Act, so if you would just note that throughout. It first says the Youth Criminal Justice Act and then after that, the constant references are to the YOA. As lawyers, we will make hay of that, so I would appreciate your just noting that.

Secondly, I have some concerns about subsection 2(3.1), and this is the power of the minister to appoint as a peace officer anyone who works with youth. These seem to be incredibly broad powers to me. I have attached to my submission an addendum explaining what the powers of a peace officer are, and those include the powers to arrest and also the powers to carry restricted weapons.

My concern is, this sends the wrong message to those who work with youth. It incorporates the mentality of an adult correctional worker rather than ensuring that all residential placements for young people and youth, and this would include youth who are in group homes and not necessarily even in custody—that we focus more on training people to deal with young people as young people, to be respectful of the youth's rights while maintaining safety when necessary. It's a balancing of vision.

Our concern is that this section would, if not now then by some future government, lead to any and perhaps all youth workers in any facility, regardless of training, having the widespread powers of a peace officer. My concern is if it stands as it is, this could really increase powers in the future.

My other concern is, under section 5, the conditions for secure detention. I had to read this a couple of times to recognize what the difference was here. My concern is that it removes from the old legislation in the first part of the section the necessary and sufficient condition that placing a young person in secure detention is necessary to ensure the young person's attendance in court or for public safety reasons. I think that's important. I think it keeps this legislation in line both with what the Supreme Court has said in R. v. D.B. and other cases, and it's also consistent with the Youth Criminal Justice Act as it stands, which states that the least restrictive custody possible should be considered for the young person. We should not have a default position to secure detention. My concern is that by removing that necessary and sufficient condition, we are going to broaden and return to the days when young people who didn't show up to court were regularly put into detention facilities.

As many of you probably know, one of the reasons for the Youth Criminal Justice Act is that Canada incarcerated more young people than any other country in the western world, and that included the US. The vast majority of those young people were in detention facilities for so-called administrative violations. Generally, those were young people who didn't bother to show up to court on some day. It's not unusual for young people to forget and miss a day of court. It doesn't mean that they won't attend court. It also included young people who violated curfew conditions. Young people are much more likely to be given curfew conditions. They would violate those conditions, and they would end up in detention facilities.

Custody, as many of you probably know, whether pre-sentencing or post-sentencing, is highly destructive and traumatic in the lives of young people. In custody, they suffer not only disruptions in their education—because even though we have wonderful facilities that work together with school boards to ensure that in the long run they are able to get education, those who are in detention for short periods of time rarely do. It's very disruptive. In my experience, if they're 16 or over, most of them are likely to drop out of school, to not return to school, if it has been disrupted to that degree. Even with learning to 18, that continues to be a problem, so I think that's something we have to be very mindful of.

A report commissioned by the Department of Justice in 2004 talked about pretrial detention as not being an appropriate tool to reduce recidivism rates among young offenders. It can, in fact, have the opposite consequence: that they are much more likely to reoffend once they've spent time in a custodial facility. I think it's in all of our

interests to ensure that young people do not become repeat offenders. I think it's necessary, then, to try to ensure that the least restrictive means possible, while balancing public safety, is going to be the most appropriate.

My next one—and I've heard you talking about this—is a significant concern for me: the privacy of young people under section 8. I consider this a significant violation of privacy rights. As was pointed out, it does say that they may open it in the presence of the young person. As a lawyer, to me, that doesn't mean "may only" or "can only"; it means that they may or they may not. If that's the intention, I think the language has to be stronger to ensure that the young person is there when mail is being opened. I think that that may just take redrafting of a word to ensure that the government's intention is going to be observed in the future. I think that while there a lot of wonderful facilities that will be very respectful, as this gentleman was stating, we can't rely on people having appropriate policies that respect the privacy of the young person.

My other concern is that there don't seem to be any guidelines. I would like to see something in there that says they consider that there is a probable cause or reasonable justification—some language as to why their mail is being opened, rather than "We can do it; we will do it." As I say, it's going to be very dependent, then, on the people in charge of the facility and how they act.

My other concern, and this is a great concern as a lawyer, is the exception on solicitor-client privilege. As everyone knows who's a lawyer, it's the one privilege that's constitutionally protected. It's a principle of fundamental justice, and we think it has to be guarded. My concerns here are twofold. First of all, it allows the facility to open a letter from the lawyer—not to read it, but to open it, and I think that in itself is a potential violation of solicitor-client privilege. I do not think it should be opened. Quite frankly, I don't understand the purpose of opening it if you're not going to read it or survey it or do anything with it other than just hand it to the young person. Perhaps that can be pointed out. But I do think that this is a possible violation.

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My other concern is further down, and this may be just a drafting issue in the act and it may be that it is meant to be inclusive, but further on, under 8(4)(c), it says "shall not be examined or read ... if it is to or from the young person's solicitor, unless there are reasonable and probable grounds to believe that it contains material" that is subject to solicitor-client communication and therefore privileged.

I think the Supreme Court has made it pretty clear that the only person who can determine whether or not a communication from a lawyer is subject to privilege is a court. It certainly is not a service provider. I think this will be jumped on, I would assume, by the bar associations in the province as it stands, if it's not clarified. I'm not sure, in reading it, if that's the intention or not, but certainly the determination of privilege from a lawyer cannot be made outside of a courtroom. I think that's essential.

The other thing that I would like to add to that is I have some concerns that there isn't an exemption for the child advocate. My concern is that if the child feels that any communication between them and the advocate, who is there to protect and advocate for them and in many cases is the only person they are going to be speaking to—most of them will not have a lawyer; this is the person who they go to if they feel there's a rights violation. If they believe that that communication can be opened, then they're going to feel, whether or not it's true, that they are going to be subject to reprisals within the institution. I think that's a significant concern for young people. I don't believe it's the intention of this act, but without having it specifically in the CFSA—and I think it needs to be there, because certainly, as I know, very few people read legislation that they don't have to. I've heard about the child advocate going in hand with legislation that says, "We have private communications" because no one has read that legislation. I think it's likely that service providers will read this and I think it should be reiterated in there that private communications with the child advocate include written and oral communications, and they should not be subject to being opened or read by the service provider. So on that front, I think I've sort of covered that.

As for secure isolation—I'm sure you've heard this before today; I'll be surprised if you haven't—I must say I think it's unfathomable that the same protections do not apply to 16- and 17-year–olds when it comes to secure isolation. Those of us who have been through the Meffe inquest and the Lonnee inquest know—in fact, David Meffe was 16 at the time—that young people in secure isolation are more likely to have suicidal ideation, are more likely to contemplate suicide. I think this is a basic protection that the government has to provide.

To me, it's constitutionally incomprehensible that we would have this arbitrary difference now that both groups of young people are under the same legislation, that we would have this arbitrary difference in protection when it comes to secure isolation. From the government's point of view, I would be concerned about possible civil litigation coming out of this if a young person ends up harming themselves because they didn't receive the same protections because they happened to reach their 16th birthday. I would be concerned as a member of the government; I'm concerned as a member of the public that a young person at the age of 16 wouldn't have the same protections as afforded to a 15-year-old. It certainly isn't in line with the UN Convention on the Rights of the Child. I can only assume it was an oversight. I can't see any rationale for it.

I think I've hit the main points. I've tried not to repeat what I've heard other people speaking of.

The Chair (Mr. Shafiq Qaadri): Thank you. A brisk one minute per side. Ms. Horwath.

Ms. Andrea Horwath: Thanks very much and thanks for the clarification, particularly around the issue of lawyer-client privilege, because it has come up. But I think you explained it very, very well, and I appreciate that.

I want to get you to talk a little bit more about the secure isolation issue, because I think it's an important one. If there were to be an amendment to the act, it would basically be taking away the differentiation in terms of age. That would satisfy you in terms of making sure that all young people, regardless of if they're 16 or 17, are provided the same—

Ms. Lee Ann Chapman: Absolutely. That goes for the observation and the times in secure isolation. I think all the same protections must apply.

Ms. Andrea Horwath: Could you comment on the issue around the backlogs in the courts and the extent to which that might then affect children or young people?

Ms. Lee Ann Chapman: One obvious place it affects young people is in detention. That is one of the reasons why the Youth Criminal Justice Act has tried to minimize the amount of time that young people—

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

Mrs. Maria Van Bommel: Thank you for being here today. You've brought up a number of points. I hope you will send us a written submission as well, because there are so many different things that you've brought forward.

My understanding is that under the Child and Family Services Act, any mail from the advocate is not to be opened, so I'm assuming that would also be part of policies going forward.

As I say, I really do look forward to getting your numerous comments in writing, because there was quite a bit that you brought forward. I appreciate you being here today.

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

Mr. Peter Shurman: You talk about custody being disruptive. I could tell you a story, which I won't bore you with—and we haven't got the time, anyway—of a woman in my riding who has had her daughter in custody probably two dozen times. She always successfully gets out and then winds up selling her body, getting into drug problems—you name it, she's been there. It would be my view that, if anything, we should be a little harder on the custody aspect of it. Please comment.

Ms. Lee Ann Chapman: I think if you look at the social science evidence—all our comments are always evidence-based. We don't like to make ideological assumptions. I think if you look at the research in Canada, by people like Anthony Doob, or in the US on the juvenile justice system, you'll find—and that's why the amendments to the Youth Criminal Justice Act specifically state that you cannot substitute child welfare reasons for custodial reasons.

In other words, the courts are not good at doing this. Jail is not good at doing this. It's not a place where people get better. In fact, the more contact that people have in custodial facilities, the more likely they are to reoffend. There are some people who will go on to offend. Certainly, locking someone up for their own protection has not been a cure in the past and there's no reason why it would be in the future. I think we have to use science—

The Chair (Mr. Shafiq Qaadri): Thank you for your presentation on behalf of Justice for Children and Youth.

CHRIS McCALLUM

The Chair (Mr. Shafiq Qaadri): We now move to our next presenter, Chris McCallum, who comes to us by way of teleconference. Mr. McCallum, you have 20 minutes in which to make your presentation. The committee is awaiting your remarks, and I invite you to begin now.

Mr. Peter Shurman: Ten minutes.

The Chair (Mr. Shafiq Qaadri): You have 10 minutes to make your presentation. Thank you.

Mr. Chris McCallum: Good afternoon. The two topics that I want to speak in regard to are subsections 8(3) and 8(4).

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

"(a) 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;"

My concern is that the word "articles" is very broad. It allows for open interpretation, to mean both physical material as well as written statements in a letter or correspondence, thus allowing whomever to interpret the legislation as it fits the provider's own purposes. To provide an example, if a client receives a letter, correspondence or package and receives material or a physical article that's prohibited, then it would have to be justified by the withholding of the material or physical article. But if there is something that is written in the correspondence that the alleged provider does not want the client to learn of, they can black it out or withhold the entire letter. The identity of the sender is irrelevant, but if the receiver/client is being advised in writing by the sender that, let's say, the treatment the client/receiver is receiving is unlawful, the provider is not going to want the receiver to learn of this, thus the word "articles" implemented in this legislation: They could just block it out. I don't understand why a word so broad would be used.

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A case in point that is currently an issue with the children's advocate office and very well headed to court: The children's advocate is attempting to investigate a claim by a youth who called his constituency office claiming that he was beat up, assaulted by the guards. I put to this committee, what do you think would happen to any correspondence that the advocate might send this youth in regard to his rights and/or complaint procedure? Do you really think that the provider wants this youth in question to have possession of this article—and I again emphasize "article," which is the word used in the proposed new legislation—to give justification to my claims, has not the advocate taken this matter to court and will be heard on December 9, 2008, just to be able to learn of the youth's claim at first hand? There should be a list defining articles, listed and provided to the ministry for approval. I don't know who else has brought up the issue,

but those are my personal sentiments on that specific piece of legislation.

In regard to proposed (b) and (c): "(b) subject to clause (c), 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 content of the written communication may cause the child physical or emotional harm." In concurrence with the former, it would only be natural for the receiver of the correspondence to be emotionally upset to learn that not only are his rights being violated, but they, being the service provider, are both committing malicious acts and/or breaking the law to obstruct any discovery/exposure of those facts that would lead to a formal investigation, which could or would lead to the reprimand of not only the individual perpetrator but also the agency provider they work for.

I know it's kind of a tomahto-tomato thing between one paragraph and the next, but I just wanted to state my sentiments on the matter.

Particularly with paragraph 5, it says, "In this section, 'written communications' includes mail and electronic communication in any form." They use this part 5 to ensure that they have covered all forms of written communications and use the word "written" specifically so there is no doubt. Yet as the former, they use the word "articles" with, as before mentioned, criminal and conspiratorial intent to facilitate their ability to commit whatever malicious and criminal acts they choose to. If caught committing such, they can simply use the broad interpretation of the word "articles" to ward off liability. It's been done over and over.

The second one I wanted to speak to is section 59. As this new legislation reads, "Every member of the Legislative Assembly of Ontario is entitled to enter and inspect any correctional institution or community resource centre established or designated under this act, whether it is operated or maintained by the ministry or by a contractor, for any purpose related to the member's duties and responsibilities as a member of the Legislative Assembly, unless the minister determines that the correctional institution or community resource centre is insecure or an emergency condition exists in it." This proposed legislation is not only broad, elusive and constrictive, but it also facilitates malicious and criminal acts. I can't believe that this type of wording is allowed to be in legislation.

The proposed legislation states: "Every member of the Legislative Assembly of Ontario is entitled to enter and inspect any correctional institution or community resource centre established or designated under this act, whether it is operated or maintained by the ministry or by a contractor"—which includes the children's aid society—"for any purpose related to the member's duties and responsibilities as a member of the Legislative Assembly," but they now turn around and prevent members of the Legislative Assembly of Ontario from entering, who have been elected by the people to represent the people, with a really concerning addition that states, "unless the minister determines that the correctional institution or community resource centre is insecure or an emergency condition exists in it." If that addition is to be included in the proposed new legislation, that would facilitate obstructing and/or hindering a member of the legislative body, so there is an imperative need for safeguards and documentation with these actions, such as if the minister and/or a senior staff official at the location intends to deny such member access, they are to put in handwriting the reasons why they intend to deny access and provide such handwritten letter forthwith; also, upon such handwritten notice, it is up to the member of the assembly to decide if the alleged insecurity does in fact endanger the member, staff on location, other parties at the location, or the safe function of it and/or if the alleged emergency warrants the denial of the member's right to enter. There's just way too much leeway to obstruct.

As mentioned in the previous scenario, if the youth is calling the advocate at his constituency office in regard to being wrongfully assaulted and abused by guards, and fellow inmates, clients or foster children are acting out in retaliation, the minister can flagrantly claim to the member of the assembly that there's a security issue on the premises, yet the reason for that issue would be due to the officials' and staff's own wrongdoings. They would be trying to keep superiors, such as yourselves, members of provincial Parliament, from observing and learning about the aforesaid officials' and staff's wrongdoings. I don't see how legislation can be put in there to allow such flagrant manipulation of legislation for malicious purposes—I'm really not speaking straight here but anyways—for example, here's a publicly noted incident: They claim that these types of acts by officials do take place and are committed—

The Chair (Mr. Shafiq Qaadri): Mr. McCallum, I'd just like to inform you that the time allotted for your presentation has now been consumed. Thank you, on behalf of the committee, for your time, thoughts and deputation. Please feel free to submit any further commentary in writing to the clerk of the committee.

CHRIS CARTER

The Chair (Mr. Shafiq Qaadri): I'd now like to call our next presenter, Mr. Chris Carter, who I note has been sitting there very patiently for the last three hours. Mr. Carter, I welcome you. As you've seen, you have 10 minutes in which to make your presentation. I would invite you to please begin now.

Mr. Chris Carter: Thank you very much. This is a fairly intimidating environment for me to speak in today—I am actually a construction worker; if you want to know how to run a bulldozer or install water main pipe, I'm your man—but I'm going to do my best.

Initially, I'd like to qualify my presentation today by stating that I have a layman's understanding of child protection and welfare issues. I acknowledge that I do not know all of the implications and/or ramifications con-

nected to the issues being discussed today. As well, my understanding of the issues may not be as accurate as some of the others in this room.

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That being said, I want to humbly and deferentially impress upon this committee today that granting the Ministry of Children and Youth Services, and by extension, the 52 or 53 children's aid societies in the province of Ontario today, more power, fundamentally and essentially, is most definitely a gigantic step in the wrong direction. That is the last thing, from my perspective, that our society, our children and our families— especially but not exclusively those who come from the poor, working poor and working class socio-economic groups—need for their health and welfare.

From the perspective of parents who have had their children removed from their care by children's aid societies, the playing field is almost uncontestably tilted in the favour of the children's aid societies. The uncontested nature of that is defined by various aspects. One is the credibility advantage, which is provided to the children's aid societies and their workers by the courts—from the perspective of the parents, inexplicably so, unjustifiably so. Another is the significant financial resources which the children's aid societies are able to call upon from the Ministry of Children and Youth Services.

Many of the parents are reporting that the children's aid societies seem to be following an ideology or a practice of intimidation, domination, subjugation through litigation. The amount of money the children's aid societies are spending on litigation as opposed to the amount of money that they are spending on trying to solve families' problems—the contrast is significant and serious, and as far as we're concerned, a very real cause for concern.

Just very quickly an example: The Waterloo region, one of the healthiest regions in Ontario in terms of their economy—if you ever go there, you will be impressed by the number of hockey arenas, baseball diamonds, churches, schools, and yet for some inexplicable reason, that community, which is home to Research In Motion—I see a lot of BlackBerries here today—and Toyota, among some of its other very strong and healthy companies, is burdened with perhaps the most litigious children's aid society in the province of Ontario today. There is no justifiable reason for that to be the case.

Earlier on, one of the presenters spoke about the roots of youth violence material which had been passed out. First of all, before I forget: In terms of procedure, I wonder if the committee would consider allowing, in the future, the presenters to ask questions of each other, because I'm here to testify today that I would most definitely have taken advantage of the opportunity to ask questions of the honourable Minister of Children and Youth Services, Ms. Deb Matthews, and I very much wish to do so, but I guess the rules do not allow it. But perhaps the committee would consider amending that in the future.

We heard from one of the other honourable presenters that Ontario has historically incarcerated more youth than any other jurisdiction in the world. It is my understanding that today—I remember reading not too long ago a transcript from a speech that the Honourable Deb Matthews had made to the Legislature, where she stated that currently we have somewhere around 29,000 children in state custody in Ontario today. I believe that makes us again, in terms of numbers, the jurisdiction which distinguishes itself as having the highest number of children in state care. I wonder if the increase in youth crime which is being reported to this committee today—I wonder if there is any correlation between those two facts, i.e., that we have so many children being removed from their families, and then we have so many children engaging in crime. I am here to assert to this committee today that, in fact, there is quite possibly a relationship between those two issues.

Again, with my layman's understanding—I have read social science material which asserts that removing children from "mildly dysfunctional homes" is a mistake. That is what is occurring. In fact, I know that children are not being just removed from mildly dysfunctional homes or seriously dysfunctional homes in this province today by the children's aid societies, but they are actually being removed from homes that are healthy and in which the children are loved and very much cherished on a daily basis. I believe that the emotions that are engendered in those children who are being removed from those homes, regardless of the fact that they may or may not be working poor, is what might be resulting in the increase or may be contributing to the increase in youth crime.

We often hear reports from fathers stating that the children's aid societies—and I do not want to make this a gender issue at all—and the family courts in Ontario are blatantly discriminatory towards them. If we think back to our own childhoods, of our two parents, to which one did the responsibility fall, in terms of making sure that we were raised, socialized and enculturated to be law-abiding citizens? I would humbly submit to this court that that was our fathers' responsibility primarily. Alternatively, the nurturing, historically, primarily, came from the mother. But there is that very blatant severing of the father-child bond in today's family courts very seriously being perpetrated by the children's aid societies, which, again, might be contributing to this issue of the increase of youth crime.

Mr. Irwin Elman from the office of the child advocate—and I would like to publicly acknowledge the very distinct improvement of service from that office since Mr. Elman was put in charge of it—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Mr. Carter, just to let you know.

Mr. Chris Carter: Sorry, sir.

He reported that contrary to what the Ministry of Children and Youth Services is alleging, his office was never consulted or involved in any true way in regard to the writing of Bill 103. I don't want to say that the Ministry of Children and Youth Services is being fraudulent by asserting that, in fact, they did involve his office, but there are many families who feel that once

they get into court, the children's aid societies are able to effect involvement with their families only because they are making repeated false statements in the affidavits which they provide to the court. There is a condition in the Child and Family Services Act which stipulates that the children's aid societies are supposed to act in good faith. They are not being held accountable. The individual workers—and I don't want to paint them all with the same brush—are not being held accountable.

The Chair (Mr. Shafiq Qaadri): Mr. Carter, first of all, I'd like to thank you for your presence and your passionate remarks. As you'll know, the committee is quite pleased to receive materials from you in writing, as I sense that you have much more to tell us. I'd like to thank you, but your time has now expired.

Mr. Chris Carter: Thank you.

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FOSTER CARE COUNCIL OF CANADA

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Mr. John Dunn, the executive director of the Foster Care Council of Canada. I understand it's by teleconference. Mr. Dunn, are you there?

Mr. John Dunn: Yes, I am.

The Chair (Mr. Shafiq Qaadri): That's great. You've seen the protocol: You have 20 minutes in which to make your combined presentation. I invite you to begin now.

Mr. John Dunn: As you know, I'm John Dunn, the executive director of the Foster Care Council of Canada, a non-profit organization made up of both current and former child welfare service clients and their supporters, whose mission statement reads as follows: "Involving current and former child-welfare service clients in the process of improving the quality and accountability of child-welfare services through a strong, united voice."

Our board of directors is composed of child welfare service stakeholders, including former crown wards who were moved through multiple placements throughout the majority of their childhood, as well as natural, first parents of children who have been in foster care, and other supporters from the community.

Before I get to the substantive portion of today's presentation regarding Bill 103, I just would like to provide the members of the committee with a brief background on the type of work the council is engaged in by summarizing a couple of our initiatives. This will help the members in understanding and putting into context the reasoning behind our recommendations for amendments to the bill during clause-by-clause meetings.

To start with, our annual Children's Aid Society Membership Awareness Campaign, which just began in 2008: A long list of government bodies and representatives have claimed for some time now that certain actions, inactions or decisions of children's aid societies are not within their jurisdiction to take corrective action over, since the societies, which are corporations without share capital, also known as non-profit corporations, are autonomous bodies governed by what appears to be a community-elected board of directors. These standard, form responses from officials have left a gaping hole in the transparency and accountability of child welfare services in Ontario. The list of government bodies and representatives who have been paralyzed from taking corrective actions when necessary simply because of the legal structure of societies includes: the Ontario government, through both current and former Ministers of Children and Youth Services; their deputy ministers; the various regional office program directors, supervisors and other staff; the Ministry of Government Services; the Child and Family Services Review Board; as well as various municipal police services; the privacy commissioner's office; and several MPPs.

Since these government bodies and their representatives claim to be without jurisdiction over certain actions, inactions or decisions of children's aid societies, the office of the Ombudsman is consequently without jurisdiction as well, and as everyone is aware, this is no accident, since the ministry has been opposing Ombudsman oversight of the CAS for a while.

As a result of this gaping hole in transparency and accountability in child welfare services, the council, in the beginning of 2008, launched the annual Children's Aid Society Membership Awareness Campaign, which seeks to educate Ontarians about the fact that children's aid societies are non-profit corporations which offer regular annual memberships to people who work or live within the local community of a society as a way for citizens to hold their CAS's board of directors accountable. The relationship between the board of directors as members of a society and the regular members of a society is similar to the relationship between board members in a profit corporation and its shareholders. That relationship, including the parties' legal rights and obligations, are outlined both in the Corporations Act and each society's bylaws.

In connection with the campaign, the council has also advocated for increased transparency and accountability in child welfare through MPP Andrea Horwath's office, which resulted in the creation of private member's motion number 41, which seeks to have societies make public the fact that local citizens can attend their monthly CAS board meetings, apply for memberships and have access to the bylaws of each society.

As an early indicator of the potential for our annual Children's Aid Society Membership Campaign and related efforts to reach the public and inform them of how they themselves can advocate for increased transparency and accountability, the council has received reports from citizens across the province who have applied for but had their society membership applications denied. We also continue to receive reports of citizens who have laid private charges using section 23 of the Provincial Offences Act, without the assistance of police or the cost of lawyers, against societies who have spent ministry-allocated transfer payment funds on external

legal counsel to assist them in violating the offence-creating provision of Ontario's Corporations Act, subsection 307(5). The societies do so in their attempt to prevent those citizens from exercising their rights, as they exist under the statute, to advocate for positive changes within their respective societies to the existing, often select, members.

Another indicator of the potential outcomes of the council's efforts in this regard is the fact that Children's Aid Society of Ottawa, in what appears to be a response to our efforts for increased transparency and accountability, through the aforementioned method, has drafted and approved an internal position paper on transparency and governance, which will be added to the society's board manual. The society will not provide public access to the position paper; however, they will provide the public with a related brochure. The society's executive director stated in relation to the position paper during a meeting of the board, in which I attended, that the minutes of the meetings and other related documents will have to be "sanitized for public consumption."

Some other initiatives—and this is just a quick list—that the council has engaged in include guiding and supporting former foster children to and through the process of applying for Criminal Injuries Compensation Board claims in response to abuse or neglect they suffered both before and while living in foster care or youth justice placements or places of custody; making submissions and suggestions to the various committees and MPPs within the Legislative Assembly in connection with existing and proposed child-welfare-related legislation and more.

Now moving on to the matter before the committee, which is Bill 103, given the limited amount of preparation time the council had to officially discuss the bill between the passing of second reading and public hearings, the council would like to specifically address section 8 of the bill.

To start, I'll read a quick paragraph of a letter I sent to an MPP regarding the bill, and it reads as follows: "I am deeply concerned about the proposed subsection 8 of Bill 103, which if left as-is would be the first step in eroding Canada's well-established solicitor-client privilege which exists in the legal community across the country by allowing communications between solicitors and their youth clients to be opened at the whim of a service provider or" a member of "the service provider's staff."

The council is concerned that there are no guidelines in the legislation which either define what "articles" are to be deemed physically or emotionally harmful to a child or a youth in care or custody, and that it's up to the service provider to determine what articles are prohibited without any ministerial approval of such lists of prohibited articles. The bill also says that a service provider can intercept articles—or open mail—from the child or youth's mail, "where the service provider believes on reasonable grounds that the contents of the written communication may cause the child physical or emotional harm."

I've heard many, many stories for years now where parents who are visiting their children or youth in care during supervised visits at the society's offices are told by society staff that they're not allowed to tell their children they love them; they're not allowed to ask questions as to how they're doing in school or any other expressions which might show their child that they are loved by their parents, regardless of the fact that at present, they can't be together.

Over time, these children and youth are led to believe that they are not loved by family, as the societies and many of their workers have determined on their own that it is emotionally harmful to a child to discuss such things. I've even heard of situations where children in care have had court-ordered access to their families, as left to the discretion of the society, completely eliminated by the society for years, and families in such situations who have mailed pictures to their children in care with phone numbers on the back have had them removed from being received by the child because the agency or the home decided that they would be harmful.

The proposed legislation also states that the intercepted mail must be opened in the young person's presence, the purpose of which, I assume, is to let the child at least be aware of the fact that they are getting mail, but that parts of it have been removed in the interests of their safety and emotional well-being.

If you take a look at section 98 of the subordinate Ontario regulation number 70, it states that, "Every licensee shall ensure that, where under subsection 103(3) of the act, mail is opened or an article removed from mail to a resident who is in a residence operated by the licensee, the reason for opening the mail or removing the article is noted in the resident's case record." The subordinate regulation, which is unknown to most families, friends and advocates of children and youth in care or custody, and possibly even members of this committee, let alone the children and youth who are directly affected by it, is unable to ensure that service providers are held accountable when they fail to follow the prescribed legislation for opening mail to a child in care or custody.

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Also, the way the bill is worded under subsection 8(4), it is extremely dangerous in that, first, it allows for the violation of solicitor-client privilege, and second, it allows the service providers to determine by their own internal policy what they deem prohibited. If youth in care or custody were to be reporting institutional abuse, this communication could be intercepted, including any response from the youth's solicitor, as long as the service provider deemed such communication to be prohibited according to their own internal policies, something which can easily be abused without any oversight or independent approval of what is or could be deemed prohibited.

As a glaring example of the potential which exists for service providers to abuse such unbridled authority as being able to determine internally what may be harmful to a child in care or custody, the Ministry of Children and Youth Services itself, which is supposed to be the monitoring body, which establishes guidelines for service providers to follow, has itself recently been brought to court by the newly independent chief Provincial Advo-

cate for Children and Youth, Irwin Elman, because the ministry, of all trusted bodies, has been withholding abuse reports from his office, and in the meantime, turning around and telling the media that, "It is the ministry's desire to be as open and transparent as possible, while respecting the privacy provisions intended to protect the privacy of our children and youth."

Similar abuses of authority are rampant in children's aid societies, which are service providers as defined in the act, when they refuse to give copies of former foster children's records even to them when they ask, without having to spend countless hours and dollars going through long legal battles.

Serious occurrence reports or abuse reports, which detail the abuse of children and youth in care and custody, among other things, are created and maintained by service providers and societies, and then copies are filed with the ministry. Societies and the ministry simply do not provide any access to them for former wards. This is supposedly done, according to the societies, in the best interests of the adults who are seeking access to their own records. Also, since neither federal nor provincial privacy legislation applies to societies in Ontario, former wards are totally out of luck in their attempts to obtain copies of their own records.

Further exacerbating this issue for former wards is the fact that even sections 184 to 191 of the Child and Family Services Act, which appear to have been proposed to regulate access to child welfare records by former wards and others, have never, at any time since the act's passing decades ago, been proclaimed into force.

In summary, the council recommends to the members of the committee the following three points.

(1) That section 98 of Ontario regulation 70 be repealed and added as a new provision to section 8 of Bill 103, with more up-to-date modifications which would also include requirements that the service providers, when removing articles prohibited from written communications, also be required to give ministry-approved written instructions to the child or youth involved which will inform them of how to obtain copies of the removed articles once they are no longer receiving child protection or youth justice services.

I hope that was somewhat clear, but I'll move on to (2) and ask for questions later.

(2) The council is asking that offence-creating provisions be added to the end of section 8 of the bill pertaining to the section—or, in the alternative, in answer to the lack of external oversight for child welfare in Ontario, added to the end of the Child and Family Services Act, encompassing the entire act for all of its provisions, so that anyone can hold service providers accountable in child welfare matters through the much-easier-to-navigate section 23 of the Provincial Offences Act, which enables citizens to lay private charges where approved by a justice of the peace.

(3) That the bill include a set of guidelines as to what is to be deemed emotionally or physically harmful to a child in care.

It is the sincere wish of the Foster Care Council of Canada that neither the Ministry of Children and Youth Services nor any of the members of the Legislative Assembly of Ontario become—the first province in Canada to begin down the slippery slope of eroding solicitor-client privilege, since other provinces are closely watching what goes on in this Legislature.

Thank you for your time, and I'm free to answer any questions the members may have, or you could contact me through our website, afterfostercare.ca.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dunn. We've got a minute and a half per side, beginning with the government.

Mrs. Maria Van Bommel: Thank you very much, Mr. Dunn, for very thorough presentation. I have no questions at this time.

The Chair (Mr. Shafiq Qaadri): To the PC side.

Mrs. Julia Munro: Thank you very much, Mr. Dunn, for providing us with this overview. Am I correct—obviously, through Hansard, we'll get the information that you provided—but certainly, we'll look very carefully at the three recommendations that you have suggested here today.

The Chair (Mr. Shafiq Qaadri): Now to Ms. Horwath.

Ms. Andrea Horwath: Hi, John; it's Andrea Horwath speaking. I wanted to ask you about your last comments, when you said that it's a slippery slope and Ontario would be the first province. Can you explain that a little bit more?

Mr. John Dunn: Well, I just mean the fact that, I believe it's clause 8(4)(c) that talks about allowing group homes, foster homes—or I guess it's the youth justice homes and residential places, or whatever they're called—to open the mail between solicitors and clients; in other words, the youth in the homes and/or their lawyer.

As far as I know, in Canada this is one of the highest privileges that exists in all communities, let alone the legal community. If it starts happening here in Ontario under the guise of youth justice, I'm afraid of where it might go. If other provinces are watching, I'm afraid that they might just start to say, "Okay, you know, now we have a provision in an act in Ontario," and that can sort of set a precedent for others to follow in other areas, which is pretty scary.

Ms. Andrea Horwath: Thank you.

The Chair (Mr. Shafiq Qaadri): You've concluded your questions, Ms. Horwath?

Thank you, then, to the members of the committee and to you, Mr. Dunn, for your presentation.

Just before we adjourn, I would inform committee members that, as you know, the administrative deadline for filing amendments with the clerk is Thursday, December 4 at 5 p.m., and clause-by-clause consideration of the bill is scheduled for Monday, December 8. Is there any further business before the committee?

Seeing none, committee is adjourned.

The committee adjourned at 1656.

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