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# Official Report of Debates (Hansard)

**Wednesday 2 December 2015**

# Journal des débats (Hansard)

**Mercredi 2 décembre 2015**

## Standing Committee on General Government

Mental Health Statute Law Amendment Act, 2015

## Comité permanent des affaires gouvernementales

Loi de 2015 modifiant des lois relatives à la santé mentale

Chair: Grant Crack
Clerk: Sylwia Przezdziecki

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# STANDING COMMITTEE ON GENERAL GOVERNMENT

# COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 2 December 2015

Mercredi 2 décembre 2015

*The committee met at 1600 in committee room 2.*

## MENTAL HEALTH STATUTE LAW AMENDMENT ACT, 2015

## LOI DE 2015 MODIFIANT DES LOIS RELATIVES À LA SANTÉ MENTALE

Consideration of the following bill:

Bill 122, An Act to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 122, Loi visant à modifier la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr. Grant Crack):** Good afternoon, all. I'd like to call the meeting to order. This is the Standing Committee on General Government. I'll call the meeting to order. Welcome, everyone.

Today, we are here to discuss Bill 122, An Act to amend the Mental Health Act and the Health Care Consent Act, 1996, clause-by-clause. Again, welcome all members. I would ask at this time if there are any members who would like to ask any questions or make any comments prior to commencing clause-by-clause? Madame Gélinas.

**Mme France Gélinas:** I have said before and I will say it again: There is a really huge, pent-up demand out there to make modifications to the Mental Health Act. This very, very limited process that we've had to hear from people is sort of shameful. Mental health very seldom gets talked about in our Legislative Assembly. Finally we had an opportunity to put on the record issues with the Mental Health Act, but the whole thing was so little that it falls way short of people's expectations.

**The Chair (Mr. Grant Crack):** Thank you. Any further comments? There being none, we shall get into clause-by-clause consideration.

We shall start with section 1. There are no amendments. Any discussion on section 1? There being none, shall section 1 carry? Those in favour? I declare section 1 carried.

Section 2: Any questions or comments? There being none, I shall call for the vote. Shall section 2 carry? Those in favour? I declare section 2 carried.

Section 3: Any discussion? There being none, I shall call the vote. Shall section 3 carry? Section 3 is carried.

**Mr. Bill Walker:** Mr. Chair?

**The Chair (Mr. Grant Crack):** Yes, Mr. Walker?

**Mr. Bill Walker:** Are there amendments to this section?

**The Chair (Mr. Grant Crack):** There is a new section being proposed. I'm just about to get to that, Mr. Walker.

**Mr. Bill Walker:** Thank you.

**The Chair (Mr. Grant Crack):** So there is a new, proposed section by the official opposition. It's a new section, 3.1, and I would ask Mr. Walker to read it into the record.

**Mr. Bill Walker:** I move that the bill be amended by adding the following section:

"3.1 Section 15 of the act is amended by striking out 'physician' wherever it occurs and substituting 'physician or registered nurse in the extended class'."

**The Chair (Mr. Grant Crack):** Thank you very much, Mr. Walker. However, I will declare this motion out of order, this particular amendment, because it seeks to open a section of the act that is not open in this particular bill. It is therefore beyond the scope of the bill, so this is out of order.

We shall move to a proposed new section by the third party, the NDP, which is new section 3.1. Ms. Gélinas, would you like to read that into the record, please?

**Mme France Gélinas:** Yes, please. I move that the bill be amended by adding the following section:

"3.1 Subsections 15(1) and (1.1) of the act are amended by adding 'or registered nurse in the extended class' after 'physician' wherever it occurs."

This is to show that nurse practitioners and primary care physicians could both be useful in helping patients as described in this bill.

**The Chair (Mr. Grant Crack):** Thank you. Unfortunately, I will have to declare that this particular motion is out of order as well, as this amendment does seek to open a section of the act that is not open in this bill and it is therefore beyond the scope of the bill.

We shall move to a new section 3.1, as proposed by an amendment in a motion proposed by the official opposition. Mr. Walker.

**Mr. Bill Walker:** I move that the bill be amended by adding the following section:

"3. Section 15 of the act is amended by adding the following subsections:

"'Application by registered nurse in the extended class

"'(6) A registered nurse in the extended class may make an application under this section for a psychiatric assessment of a person who is the registered nurse's patient at a clinic at which no physicians are available to provide physician services.

"'Same

"'(7) If an application for a psychiatric assessment of a person is made by a registered nurse in the extended class, subsections (1) to (5) apply to the registered nurse in the extended class as though he or she were a physician.'"

**The Chair (Mr. Grant Crack):** Thank you, Mr. Walker. Unfortunately, I will declare this particular motion out of order, as well, as this amendment does seek to open a section of the act that is not open in this bill, and is therefore beyond the scope of the bill.

We shall move to a new proposed amendment to section 3.1 by the third party, the NDP. Madame Gélinas, would you like to read that into the record, please?

**Mme France Gélinas:** Sure. I move that the bill be amended by adding the following section:

"3.1 Section 15 of the act is amended by adding the following subsections:

"'Registered nurse in extended class

"'(6) A registered nurse in the extended class may make application under this section for a psychiatric assessment of a person.

"'Same

"'(7) If an application for a psychiatric assessment of a person is made by a registered nurse in the extended class, subsections (1) to (5) apply to the registered nurse in the extended class.'"

I would ask for unanimous consent to be allowed to open up section 15 of the Mental Health Act. What is basically happening in our province right now is that for over 100,000 Ontarians, their primary care provider is a nurse practitioner. They are the people who know the patients, who have more likely seen them in the last seven days and would be able assign a form 1. How do I go about asking for unanimous consent?

**The Chair (Mr. Grant Crack):** First of all, thank you very much. I will also, unfortunately, declare this one out of order, as it does open a portion—as you mention, section 15 of the act—which is not open in this particular proposed act and therefore is out of the scope of the act.

Madame Gélinas is asking committee for unanimous consent—that is within order—to reopen section 15 of the act and to consider this particular amendment. Do we have unanimous consent?

I heard a no. My "out of order" on the new proposed section 3.1 amendment stands.

We shall move to section 4. There are no amendments. Is there any discussion of section 4? There being none, I shall call the vote. Shall section 4 carry? I declare section 4 carried.

We shall move to section 5. There are new subsections 3(3) and (4) and new subsections 38(4) and (5) of the Mental Health Act. I believe the government—Mr. Fraser, would you be so kind as to read that into the record?

**Mr. John Fraser:** Chair, I move that section 5 of the bill be amended by adding the following subsections:

"(3) Section 38 of the act is amended by adding the following subsections:

"'Requirements for certain board applications

"'(4) The officer in charge shall promptly give the patient a copy of the application and shall also promptly notify a rights adviser when,

"'(a) the minister, the deputy minister or the officer in charge applies under subsection 39(8) to transfer the patient to another psychiatric facility; or

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"'(b) the officer in charge, or his or her delegate, applies under subsection 39(9) to vary or cancel an order made under section 41.1.

"'Rights advice

"'(5) The rights adviser shall promptly meet with the patient and explain to him or her the significance of the application.'

"(4) Subsection 38(8) the act is amended by striking out 'Subsections (3) and (7)' at the beginning and substituting 'Subsections (3), (5) and (7)'."

**The Chair (Mr. Grant Crack):** Thank you, Mr. Fraser. Is there any discussion on the proposed amendment?

Mr. Fraser, could you just reread the final—where it starts at (4) just so that we have it correct in the record?

**Mr. John Fraser:** Yes: "(4) Subsection 38(8) of the act is amended by striking out 'Subsections (3) and (7)' at the beginning and substituting 'Subsections (3), (5) and (7)'."

**The Chair (Mr. Grant Crack):** Thank you very much. Is there any further discussion on the proposed amendment? Ms. Gélinas.

**Mme France Gélinas:** I would say that it is very important to ensure access to rights advisers, but I am still concerned about granting authority to the minister and the deputy minister to bring an application to transfer patients.

I would quote partly from the Mental Health Legal Committee when they did a deputation in front of our committee. What they said was, "The proposed amendments expand the list of who may bring an application to transfer a patient to another psychiatric facility to include the minister and deputy minister. In the previous transfer provision, only the involuntary patient, a person on his or her behalf, or the officer in charge of the psychiatric facility where the person was detained could apply to the CCB to determine whether the patient should be transferred.

"The timing for when the minister, deputy minister and officer can bring an application is not explicitly provided for...." So we have no idea when those could happen.

The Mental Health Legal Committee also went on to say "that it is not clear what interest the minister or the deputy minister has in bringing a transfer application. The grounds upon which the minister may bring such an application should be explicitly provided for and reflect the interests of the patient."

None of this is present right now, and the government has not provided any reasoning as to why those new provisions are necessary for the minister or the deputy

minister. The minister and the deputy minister will never be part of the circle of care. They will never be part of the ones who know the patient and know the best interests of the patient, so why should they have, in law, the right to move the patient about? There's some explanation that needs to be given before something like this happens, and I would like to hear this explanation.

**The Chair (Mr. Grant Crack):** Thank you, Ms. Gélinas. Any further discussion? There being none, we have before us a proposed amendment, government motion number 4. If there is no further discussion, I shall call a vote. Those in favour of government motion number 4? I declare government motion 4 carried.

We shall now deal with the section in its entirety. There was one amendment that was carried. Is there any further discussion on section 5 in its entirety? There being none, I shall call a vote. Shall section 5 carry? Those in favour? I declare section 5 carried, as amended.

We shall move to section 6. There is an NDP motion, number 5, which amends section 6, subsection 39(7) of the Mental Health Act. Ms. Gélinas?

**Mme France Gélinas:** I move that subsection 38(7) of the Mental Health Act, as set out in section 6 of the bill, be amended by striking out "12 months" and substituting "three months".

**The Chair (Mr. Grant Crack):** Thank you very much. Further discussion? Ms. Gélinas.

**Mme France Gélinas:** Basically, we are talking about fundamental liberties in this part of the bill. The Canadian Civil Liberties Association has implored this committee to ensure that rights are available to individuals at their regular review before the CCB; that is, every three months. The CCLA said that if this committee chooses to delay such access to justice for the individual, an application for one remedy should not create a 12-month bar for applying for a different remedy. The bill requires a correction on this point.

Noa Mendelsohn Aviv told the committee on Monday that "a 12-month lag also seems to me very long.... It's an unacceptable restriction on access to justice." Ms. Mendelsohn Aviv went on to recommend that the standing committee allow individuals "to make their case every three months on their regular review."

The Mental Health Legal Committee also told us that the proposed amendments in Bill 122 limit the frequency of applications to once every 12 months: "From the perspective of a vulnerable person, restricting such applications to once a year is not reasonable." A year is a very long time in a person's life, especially if you are detained in a hospital.

Bill 122 creates a distinction between a meaningful CCB hearing that will take place every 12 months and potentially meaningless ones at the interim opportunity to apply to the board. It also increases the prospect of long-term patients having to apply to the court by way of habeas corpus to enforce 41.1(2) orders in the absence of meaningful monitoring of its own order by the CCB.

These problems could have been avoided by consulting with the CCLA and the MHLC prior to the introduction of this bill. But they were first consulted on this bill on November 9, despite both being interveners in the case of P.S., which brought this request from the court.

The government has been rather disrespectful to the expert mental health legal community. As a result, this bill, the way it is written now, risks still being unconstitutional. I want to ask the government members of the committee: How can you defend having done no consultations with the actual intervener in the P.S. case prior to introducing this bill? Think about it: 12 months is a long time. Some of the applications that they make may vary greatly. They may ask for an application for a variance as to their level of care. They may ask for a variance that has nothing to do with level of care, that has to do with privileges, or they may ask for a variance that has to do with the medications. But once you ask for one variance, you are barred from ever asking for another one for 12 months.

People's lives change in a 12-month period. To have a meaningful review every three months—three months is still a long time, if you ask me, but at least it's more meaningful than once a year. I could live with not asking for the same variance; the same variance could go for 12 months. But if there's a different one, it should be every three months, not 12. Twelve months is too long.

**The Chair (Mr. Grant Crack):** Thank you, Ms. Gélinas. Further discussion? Mr. Fraser.

**Mr. John Fraser:** I'll just very quickly respond to that. In the P.S. case, the court gave us a very specific direction in terms of ensuring the rights of long-term, involuntary patients. I think that, under the CCB, patients are granted hearings not just based on a 12-month cycle, but also based on the fact that there is a material change in their circumstance. So I think there's provision there for people who have changes in their circumstances to get an additional hearing by the CCB.

I think patients are protected. I share the member opposite's concern, but I think it's addressed with the way the legislation is written in the Consent and Capacity Board right now.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. Gélinas.

**Mme France Gélinas:** Could we have a clarification from the legal expert here? The way the bill is written right now, can they ask for the same variance within three months or is it 12?

**Mr. Eric Chamney:** The way the bill is written right now, they can only ask for these orders every 12 months. So these specific orders are every 12 months.

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**The Chair (Mr. Grant Crack):** Thank you, Mr. Chamney. Any further discussion? Ms. Gélinas.

**Mme France Gélinas:** The argument that Mr. Fraser just made is not based in the reality of the bill. If we don't change the bill, if the bill continues to say "12 months," they will not be allowed to ask for a variance for a 12-month period. It is not within the CCB to change the rules once we put it in law. Once it is in the bill and

the bill says 12 months, then the variance cannot be brought forward again for 12 months.

**Mr. John Fraser:** Okay, that's—

**The Chair (Mr. Grant Crack):** Mr. Chamney would just like to clarify, if we have the committee's indulgence.

**Mr. Eric Chamney:** I'm sorry. I was too quick in my response. In the subsection itself, you cannot make an application under subsection (6) "within the previous 12 months, unless the board is satisfied that there has been a material change in circumstances."

So I apologize. The characterization was correct in that generally, the rule is "not within 12 months," but there is an exception if the board considers that there has been a material change in circumstances.

**The Chair (Mr. Grant Crack):** Thank you, Mr. Chamney. Any further discussion? Ms. Gélinas.

**Mme France Gélinas:** This is setting the bar pretty high. Have you ever sat in one of those hearings? Have you ever tried to prove that there has been a material change? It doesn't matter if you're asking for something different. You may be asking for granting of permission, but you may be asking for a change in your medication. It doesn't matter. Once the 12 months start ticking, if you want to ask for something else, you will be barred from doing this for 12 months unless there is a material change. There may not have been a material change, or you may be not be able to prove you meet the bar for a material change, but you may want a variance on something different. The way we have the bill written up now, those people won't be allowed to do that.

**The Chair (Mr. Grant Crack):** Mr. Fraser.

**Mr. John Fraser:** I think the exception provisions in our bill do protect people. It's a balance, and I think it strikes that balance. I understand what you're saying. I think those protections are in there, and I think it's the appropriate way to address those.

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** Well, if you had taken the time to talk to the Canadian Civil Liberties Association and the Canadian Mental Health Legal Committee, and listened to their experiences dealing with the CCB and their experiences with this particular man who brought us to this table, you would see that this is not the way it will play out. It will play out that once you've asked for one variance, you are barred from asking for another one for 12 months. Meeting the criteria for substantive changes is a bar that none of them will be able to reach.

**Mr. John Fraser:** "Material change" is the wording that's in there. It's different from "substantive." I respectfully don't agree.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? There being none, I shall call for the vote on NDP motion 5.

If I could, as Chair, help the Clerk's table: When I call "Does the section carry?", or "Does the motion carry?", could we just raise some hands, so that I can then call for those opposed as well, just to eliminate some confusion? It's one of my preferences as Chair.

So we do have NDP motion—Madame Gélinas?

**Mme France Gélinas:** I'll make it simple. I'll ask for a recorded vote.

**The Chair (Mr. Grant Crack):** That does make it simple. There has been a request for a recorded vote on NDP motion 5. I shall call the vote.

**Ayes**

Gélinas.

**Nays**

Colle, Dong, Fraser, Kiwala, McMahon.

**The Chair (Mr. Grant Crack):** I declare NDP motion 5 defeated.

We shall move to NDP motion 6, which is an amendment to section 6, subsection 39(8) of the Mental Health Act. Ms. Gélinas.

**Mme France Gélinas:** I move that subsection 39(8) of the Mental Health Act, as set out in section 6 of the bill, be amended by striking out "subsection 41.1(3)" and substituting "subsection 41.1(2)".

**The Chair (Mr. Grant Crack):** Thank you, Ms. Gélinas. Any further discussion on NDP motion 6?

**Mme France Gélinas:** Sure. It is clear to me and to the Mental Health Legal Committee that this must have been a drafting error on the part of the government. Otherwise, it would appear that the minister, deputy minister or officer in charge could apply to the CCB for an order to transfer the patient to another psychiatric facility over the objection of the patient, contrary to proposed paragraph 1 of subsection 41.1(2).

The government's own motion number 7 recognizes that the Mental Health Legal Committee was correct: The government drafted the bill incorrectly. Again, these problems could have been avoided by consulting with the experts at the Mental Health Legal Committee prior to introducing this bill, but they were consulted first on November 9, despite being an intervener in the P.S. case.

I ask the government to support this amendment so that we can move on to amendment number 8.

**The Chair (Mr. Grant Crack):** Thank you, Ms. Gélinas. Any further discussion? There being none, I shall call for the vote on NDP motion number 6. Those in favour? Those opposed? There being none, I declare NDP motion number 6 carried.

We shall move to government motion number 7.

**Mr. John Fraser:** Withdrawn.

**The Chair (Mr. Grant Crack):** There has been a withdrawal on the part of the proposer, which was the government. Government motion number 7 is withdrawn.

We shall move to government motion number 8, which is an amendment to section 6, subsection 39(14) of the Mental Health Act. Mr. Fraser.

**Mr. John Fraser:** I move that subsection 39(14) of the Mental Health Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Composition and quorum of panels

"(14) The following rules apply with respect to the composition and quorum of panels of the board that hear applications under this section:

"1. A three-member panel shall consist of the following:

"i. For the hearing of a patient detained under a certificate of continuation, a psychiatrist, a lawyer and a third person who is not a psychiatrist or a lawyer.

"ii. For any other hearing,

"A. a psychiatrist, a physician, a registered nurse in the extended class or a prescribed person,

"B. a lawyer, and

"C. a third person who is not a psychiatrist, a physician, a registered nurse in the extended class, a lawyer or a prescribed person.

"2. Despite clause 73(3)(b) of the Health Care Consent Act, 1996, all three members of a three-member panel are required to constitute a quorum.

"3. A five-member panel shall consist of the following:

"i. For the hearing of a patient detained under a certificate of continuation, one or two psychiatrists, one or two lawyers, and one to three other persons who are not psychiatrists or lawyers.

"ii. For any other hearing,

"A. one or two persons who are psychiatrists, physicians, registered nurses in the extended class or prescribed persons,

"B. one or two lawyers, and

"C. one to three other persons who are not psychiatrists, physicians, registered nurses in the extended class, lawyers or prescribed persons.

"4. Despite clause 73(3)(b) of the Health Care Consent Act, 1996, the following members are required to constitute a quorum of a five-member panel:

"i. For the hearing of a patient detained under a certificate of continuation, at least one psychiatrist, one lawyer and one person who is not a psychiatrist or a lawyer.

"ii. For any other hearing, at least one person who is a psychiatrist, a physician, a registered nurse in the extended class or a prescribed person, one lawyer and one person who is not a psychiatrist, a physician, a registered nurse in the extended class, a lawyer or a prescribed person."

**The Chair (Mr. Grant Crack):** Thank you, Mr. Fraser. Further discussion on government motion 8? Madame Gélinas.

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**Mme France Gélinas:** Can somebody explain to me why we are doing this? Because it seems to me that this amendment adds the authority for the government to add prescribed persons to the CCB. If the government wants this so that we can add people on the CCB who have mental health system experience as patients, then I'd like to remind them that the mental health legal community has shown the committee that both Nova Scotia and Newfoundland and Labrador have a legislated requirement for consumers of mental health services to be present on their equivalent panels. It is not left to regulation. So who are those prescribed persons, and why are we doing this?

**The Chair (Mr. Grant Crack):** Thank you—

**Mr. John Fraser:** You're correct. It does create—oh, sorry.

**The Chair (Mr. Grant Crack):** Mr. Fraser.

**Mr. John Fraser:** I'll get it, Mr. Chair.

It does provide the government with the ability and regulatory authority to add the prescribed person, which I think will add a process which is equally as effective a process, and give some flexibility to looking at the various professions that may be used at the Consent and Capacity Board.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. Gélinas.

**Mme France Gélinas:** So we're not really looking at having people with mental health experience but more at adding people like psychologists to the board?

**Mr. John Fraser:** "A prescribed person" is, I think, a fairly—

**Mr. Mike Colle:** Broad.

**Mr. John Fraser:** Yes, thanks. That's the word I'm looking for. It's a broad term. It's meant to be inclusionary, obviously, in a very specific way. I think it's an appropriate way to go forward in terms of looking at the people who have the capacities to be on that board, because it's not only an expertise that is required in mental health, and experiences in mental health, but it's also experiences from the point of view of an administrative tribunal. Those skills are something that's there as well.

I think it's an appropriate vehicle to ensure that the Consent and Capacity Board will have the kinds of members who have the scope and the ability to be on the committee—and I don't want to judge that.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. Gélinas.

**Mme France Gélinas:** So it is not so that we add patients with lived experience. That's not what a prescribed person is going to be?

**Mr. John Fraser:** That is not specifically mentioned in this amendment, no.

**The Chair (Mr. Grant Crack):** Further discussion? Mr. Walker.

**Mr. Bill Walker:** Just a point of clarification: Mr. Fraser, this would potentially be a case where an RN with experience in mental health could be a panel member, thereby freeing up a psychiatrist to be able to do other panels, those types of things. Is that really the intent?

**Mr. John Fraser:** It's pretty broad. That could be one of those prescribed persons. It is a very broad term.

I think, if I look at the intent of that, you're looking for the people with the required expertise to execute a fair hearing, and that requires expertise and skill in the subject matter and also requires people to have some

expertise and skill in the functioning of a tribunal and administrative justice.

**The Chair (Mr. Grant Crack):** Mr. Walker?

**Mr. Bill Walker:** I believe the Ontario psychiatrists are a little concerned that allowing nurses and/or others to sit may lower the level of medical expertise. I trust that what you're suggesting is that people with experience are going to be on there, and you have at least one psychiatrist and a lawyer, so you're still going to have some balance in there—again, freeing up other people to be able to go on to other panels.

**Mr. John Fraser:** Just frankly, I'll back up. I'm doing a bit of work on scope, so I can look into a certain number of professions like nurse practitioners and a clinically trained nurse, and know that they have the kind of expertise that will be required in certain circumstances. I also know they have a professional responsibility, when there's a patient or a circumstance in front of them that they feel is outside of their ability or their scope, that they declare that.

I think it's an appropriate use of those resources. I think there is a potential, obviously, for it to help to make sure that those cases that are very complicated and complex are done in a timely fashion, I would think, and that's the intent of that.

I can understand the concern from a specific professional community. I think that the professions that we've talked about here—and any profession, in fact—have a duty when they have a circumstance, or especially a patient, in front of them: that they know that they have to have the scope to be able to do that and, if they don't, that they declare that. In practice, I've seen that with nurses, nurse practitioners and other professions who simply say, "I can't do this."

I know that there are the skills inside that community to assist the board, so that's why I'm personally comfortable with that.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? There being none, I shall call for the vote on government motion number 8.

Those in favour? Those opposed? I declare government motion number 8 carried.

We shall move to NDP motion number 9, which is an amendment to subsection 6, adding a new paragraph 5, subsection 39(14) of the Mental Health Act: Madame Gélinas.

**Mme France Gélinas:** You said "5," but it's "6."

**The Chair (Mr. Grant Crack):** Section 6, but it's paragraph 5.

**Mme France Gélinas:** Okay. I move that subsection 39(14) of the Mental Health Act, as set out in section 6 of the bill, be amended by adding the following paragraph:

"5. Any member who sits on any panel is required to have expertise in mental health issues."

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** We have just seen, with government amendment number 8, the addition of unknown people to those boards. There is already a list of people who can sit on the Consent and Capacity Board. It is crucial that members of the Consent and Capacity Board have expertise in mental health issues, including front-line community workers, patient advocates and non-governmental associations and organizations.

The idea is really that you just passed an amendment that opens up the Consent and Capacity Board to, frankly, the unknown. The least we could do is to make sure that the people who go on there are there for the right reason and they have, basically, a mental health background: they know mental health issues; they come from the community; they are patient advocates; they are non-governmental.

I would say that this would bring some reassurance that a politician is not going to be one of those prescribed persons assigned on that board. Bring reassurance to this; it's pretty scary.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** While I hear the member opposite's comments and I respect the point of view that she brings to this, I can't help but add that when it comes to motion number 8, which just passed—just for clarification, Mr. Chair—the regulatory power that amendment number 8 allows us to have now, having just passed, was at the request of the RNAO and the psychologists. Both those professions, it seems to me, have resident capacity in mental health and the care of patients who are mentally ill. Based on those requests, we now have the power to allow that to happen.

Respectfully, I might disagree with that. I think that the amendment that we're currently discussing is redundant because the Consent and Capacity Board already ensures through its recruitment process that members who sit on it have expertise in mental health issues. While I understand the member opposite raising this as a concern, I respectfully disagree that it is one because I think the power is there already and I think that we should not be concerned, with all due respect, about this.

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** If they wanted to add psychologists and nurses, they should have said that they wanted to add psychologists and nurses, and I would have voted in favour of a recommendation like this.

**1640**

But that's not what they did; they put "prescribed person." A prescribed person could be somebody who wants to be educated on the Consent and Capacity Board; it could be people who have very good reasons for wanting to be there, but who do not have the background in mental health and who will not be basically taking part in the process that is there to strike this fine balance between the need for care and the need to respect the rights.

If they wanted to add psychologists and nurses, they should have said so. That's not what they did. They have opened the door wide open. While the Liberal government is in power right now and feels that this is what

they want to do, this bill will be there after all of us are retired and gone from this place—this bill will still be there. How this bill will be used is that it will be used with the letter of the law. The letter of the law right now does not say "psychologists and nurses"; it says "prescribed person."

Have I seen pieces of legislation used against patient care before? Yes. We have all seen it. Would you like me to start to rhyme off the number of pieces of legislation that have been used against patients rather than for them?

I realize that the people on the other side want to do it right. But we are legislators, and we have to make sure that the words that are on the piece of paper are the words that will bring forward the spirit of what we wanted to do. If you wanted psychologists and nurses, this is what you should have put in; you did not.

To add a little bit of certainty that those prescribed persons will be knowledgeable about mental health issues is a very little step, but 30 years from now, when you look back on that piece of legislation, you will be very happy that you did it.

**The Chair (Mr. Grant Crack):** Further discussion? Mr. Yurek.

**Mr. Jeff Yurek:** Yes, I wished the last amendment would have had "prescribed person with mental health expertise." I think it would have tidied that up.

My concern with this motion is I honestly don't think that lawyers need to be experts in mental health. Sitting on the panel, I think they need to be more regarded to the civil liberties of the person in question and ensure that's taken, in consent—I agree with France's motion with regard to the prescribed persons having mental health experience. I think that's a concern.

We heard from the psychiatrists who were here that they were concerned that the mental health expertise on the board could disappear. I'm fully supportive of nurses or psychologists being on the board. However, it's kind of loose, the way it's left in the last amendment. Unfortunately, with this amendment, I still honestly don't think the lawyers on the panel need to have that expertise.

**The Chair (Mr. Grant Crack):** Madame Gélinas?

**Mme France Gélinas:** You guys all realize that when you go into one of those hearings, the patient comes with a whole bunch of lawyers who are there to protect their civil liberty, and that's fine; that's why we have it.

On the other side, on the Consent and Capacity Board, you often have the psychiatrist with a whole bunch of other lawyers. The amount of knowledge of mental health during those hearings is sometimes really, really tiny, to the point of non-existent. You have the lonely voice of a psychiatrist, trying to say, "This person needs care," and then you have a well-equipped team of lawyers that are there on the other side.

The health care system needs to find the right balance. But to make sure that the Consent and Capacity Board continues to have expertise and knowledge on mental health issues, go and sit in one of those. Go and ask to see how it's done in real life. It is a whole bunch of lawyers arguing with one another, and the care of the patient takes second seat, if not third seat.

To make sure that the people who are there on the Consent and Capacity Board—have no fear: The patient does not go there alone. They are with a team of lawyers who are there to make sure that their rights are respected.

To make sure that the care possibilities are taken into account, you need people who know mental health. What we have right now is we have a huge opportunity for that knowledge of mental health to be completely eroded, where you will have lawyers arguing with lawyers, costing the system a ton of money, because none of them work cheap. At the end of the day, the care of the patient takes the second seat. This is not a big ask.

**The Chair (Mr. Grant Crack):** Thank you, Madame Gélinas. Further discussion? Mr. Fraser.

**Mr. John Fraser:** In all due respect, I agree with Mr. Yurek. I don't think we need this, as the board already ensures that we have those people on the boards who have expertise in mental health, but also those people who understand the law, and a public member as well.

I don't think there's any need to legislate this requirement. We do have the process for people who are appointed to the board. It's very clear in terms of our public appointments process right here. Expertise in something is a pretty broad term, right? I'm not sure that even the intent of what you are doing is actually what you would do—not that I would agree to change the motion, because I think that we already have what we need inside the Consent and Capacity Board and the legislation as we're proposing it to go forward in a way that's going to be fair and deal with that fairly well-defined number of involuntary patients who come before the board.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? There being none, I shall call for the vote on NDP motion number 9. Those in favour? Those opposed? I declare NDP motion number 9 defeated.

We shall move to NDP motion number 10, which is a new paragraph 6 of section 39(14) of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** I move that subsection 39(14) of the Mental Health Act, as set out in section 6 of the bill, be amended by adding the following paragraph:

"6. Panels shall, if possible, include one or more members who have been consumers of mental health services, and efforts must be made to recruit such members."

**The Chair (Mr. Grant Crack):** Thank you. Discussion? Madame Gélinas.

**Mme France Gélinas:** Well, through the deputations that we've heard, it has become clear that it is vital that the perspective of patients be respected on the Consent and Capacity Board. Nova Scotia's Involuntary Psychiatric Treatment Act stipulates that members of the review board should be appointed from a group of candidates that has expressed interest in mental health issues and preferably are or have been consumers of mental health services.

In Newfoundland and Labrador, the Mental Health Care and Treatment Act specifies that preference be

given to persons who are or have been consumers of mental health services, when choosing members of their board.

I would recommend that Ontario also adopt this language and I would say many stakeholders in the mental health community, whether it be the Mental Health Legal Committee, the Canadian Civil Liberties Association or the Advocacy Centre for the Elderly, also support this. People with lived experience have a lot to contribute. They have been there. They have seen both sides, and their knowledge and expertise is worth listening to.

**The Chair (Mr. Grant Crack):** Thank you. Any further discussion? There being none, I shall call for the vote on NDP motion number 10. Those in favour? Those opposed? I declare NDP motion number 10 defeated.

We shall deal with section 6 in its entirety. There were two amendments, so section 6 is amended. Any final discussion on section 6? There being none, I shall call for the vote. Shall section 6, as amended, carry? Those in favour? Hands would be nice, please. Those opposed? I declare section 6, as amended, carried.

**1650**

We shall move to section 7. Any discussion? I shall call the vote. Shall section 7 carry? Those in favour? Any opposed? I declare section 7 carried.

Section 8: Any discussion? I shall call for the vote. Shall section 8 carry? Those in favour? Those opposed? I declare section 8 carried.

Section 9: Any discussion? There being none, I shall call the vote. Shall section 9 carry? Those in favour? Those opposed? I declare section 9 carried.

We shall move to section 10. There is one amendment—or a number of amendments. NDP motion 11; it's an amendment to section 10, paragraph 1, subsection 41.1 of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** I move that paragraph 1 of subsection 41.1(2) of the Mental Health Act, as set out in section 10 of the bill, be amended by striking out "subject to subsections (10), (11) and (12)" at the end.

**The Chair (Mr. Grant Crack):** Further discussion? Mr. Fraser.

**Mr. John Fraser:** The following motion has the same effect with the language, and our motion 12 coming forward is stronger, so we won't be supporting this motion. But I think that the intent of—that's all I have to say.

**The Chair (Mr. Grant Crack):** Any further discussion? Madame Gélinas.

**Mme France Gélinas:** When we look at the proposed language in Bill 122, the Advocacy Centre for the Elderly said, "It is unclear from this wording whether the intent is that a patient can be transferred over their objections if the CCB finds that a transfer is in the patient's best interests or that the transfer is likely to improve the patient's condition or well-being." This "could lead to confusion and unintended consequences," and those consequences are always borne by the patients themselves. "The present transfer power within the MHA does not grant the CCB the power to transfer a patient over his or her objection. There is no indication that the government intends to make a drastic change to the MHA which would permit a patient to be transferred in such a manner."

The Advocacy Centre for the Elderly submitted that subsections 11 and 12 are also not "germane to the consideration of whether or not the patient is transferred." They recommend that the term "subject to subsections (10), (11) and (12)" be removed.

You have to realize that all of this could have been clarified way sooner had the government taken the time to talk to the Advocacy Centre for the Elderly before November 2, nearly a month and a half after the bill was tabled, and 11 months after the court had mandated the government to change the law. All of this could have been avoided and, basically, we would have had a much stronger bill.

The problem, when a bill is so—what I can say?—full of mistakes, is that you lose confidence in the whole thing. Right now, I can see that there's motion 12 that talks about the exact same thing that the government is trying to correct: the sloppy work that they put into the House for first and second reading. There's something to be learned here. Talk to people before you put those bills forward. Let's all learn from that so that we get better pieces of legislation coming forward.

You all know that the Mental Health Act is—how can I say?—hated by many, many families and people in Ontario. When you finally bring forward a bill that will open up the Mental Health Act, you have to dot the i's and cross the t's. When you do things like this, it creates a lot of turmoil for people who are already struggling enough without us making it worse.

**The Chair (Mr. Grant Crack):** Thank you. Any further discussion? Mr. Colle.

**Mr. Mike Colle:** I've been sitting through committees for 20 years—governments of all stripes. There are never perfect pieces of legislation in first or second reading. There are always amendments, technical changes. This is why we're here: to make those adjustments. I just want to put that on the record.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, then I shall call for the vote on NDP motion number 11. Those in favour? Those opposed? I declare NDP motion number defeated.

We shall move to government motion number 12, which is an amendment to section 10, paragraph 1, subsection 41.1 of the Mental Health Act. Mr. Fraser.

**Mr. John Fraser:** I move that paragraph 1 of subsection 41.1(2) of the Mental Health Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Transfer the patient to another psychiatric facility, subject to subsections (10), (11) and (12), but only if the patient does not object."

Thank you.

**The Chair (Mr. Grant Crack):** You're quite welcome, Mr. Fraser. Could you just reread where it says "1." I think you omitted "1. Transfer the patient...." So just reread that—

**Mr. John Fraser:** "1. Transfer the patient to another psychiatric facility, subject to subsections (10), (11) and (12), but only if the patient does not object."

**The Chair (Mr. Grant Crack):** Thank you very much.

*Interjection.*

**The Chair (Mr. Grant Crack):** That is fine. Further discussion on government motion number 12? There being none, I shall call the vote. Those in favour of government motion number 12? Any opposed? I declare government motion number 12 carried.

We shall move to PC motion number 13, which is an amendment to section 10, paragraph 2, subsection 41.1 of the Mental Health Act: Mr. Yurek.

**Mr. Jeff Yurek:** Mr. Chair, we're going to withdraw this amendment because we think amendment 14 is the same idea but with more specific language that we will support.

**The Chair (Mr. Grant Crack):** Thank you, Mr. Yurek. PC motion 13 is withdrawn.

We shall move to NDP motion number 14, which is an amendment to section 10, paragraph 2, subsection 41.1(2) of the Mental Health Act: Madame Gélinas.

**Mme France Gélinas:** I move that paragraph 2 of subsection 41.1(2) of the Mental Health Act, as set out in section 10 of the bill, be amended by striking out—bracket—"a physician" and substituting—bracket—"the attending physician or registered nurse in the extended class".

**The Chair (Mr. Grant Crack):** Thank you. Any further discussion? Madame Gélinas.

**Mme France Gélinas:** Sure. Basically, without this change, the authority lacks the safeguards present in the current mental health provisions. Specifically, a physician recommending a leave of absence or a community treatment order under the Mental Health Act must be familiar with the patient's current status. It's as simple as that.

We have to make sure that it is a physician or a nurse practitioner, better known as a registered nurse in the extended class, but you have to be the right physician or nurse practitioner. You have to be the one who is familiar with the patient's current status.

**The Chair (Mr. Grant Crack):** Thank you, Madame Gélinas. Just for a point of clarification for members of the committee, when Ms. Gélinas was reading into the record the motion—

**Mme France Gélinas:** I said "bracket" when they were—

**The Chair (Mr. Grant Crack):** They are quotation marks. Would you like to clarify your record to replace the—

**Mme France Gélinas:** Put the quotation marks back? Sure. I move that paragraph 2 of subsection 41.1(2) of the Mental Health Act, as set out in section 10 of the bill, be amended by striking out "a physician" and substituting "the attending physician or registered nurse in the extended class".

**The Chair (Mr. Grant Crack):** Thank you very much. Further discussion on the motion? Mr. Colle.

**Mr. Mike Colle:** Mr. Chair, we believe this motion is out of order and not related to P.S. v. Ontario. This motion would permit a nurse practitioner to recommend a leave of absence for a patient at a Consent and Capacity Board hearing.

**1700**

This amendment goes beyond what is required by the P.S. v. Ontario decision. The act allows the attending physician to put a patient on leave of absence.

**The Chair (Mr. Grant Crack):** Thank you very much. I will rule, with respect to your comments, that it is in order, and we will continue to proceed.

Mr. Walker.

**Mr. Bill Walker:** I just want to put on the record that this is a recommendation of the Ontario Hospital Association, as well. They feel that it is an appropriate need to be in the motion. I just want to make sure we put that on the record.

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** There are current provisions right now in the Mental Health Act that do just that, that make sure that the people—you always want to strike a balance, and this is the dance we've been trying to do with this bill. The balance is always the same: You want to respect the civil liberties of the patient—remember, they are being held in hospital against their wishes; at the same time, you want to realize that they are allowed treatment. They are allowed a way to get well, get treated and come back to the community, so that they can live full lives, just like everybody else. But the way we have it worded right now, because of the changes we have been doing, you will be taking that away for people who work in mental health.

You may very well have a plan of care that says that he or she is ready to have a day pass into the community. You set up a supervisor for Wednesday morning. They're going to go to their home, then they're going to go visit their grandmother, and then they're going to come back to the hospital—that's the plan of care. But come Wednesday morning, you go and see them and they are not well; they have taken a turn for the worse. The person who knows the current status of that person in real life will be a nurse practitioner, a family physician or a psychiatrist, if they happen to do rounds that day.

This already exists in the Mental Health Act. It is used all the time. Everybody wants them to get better. Everybody wants them to have a plan of care that returns them to the community. But if we don't make those changes, we will end up with orders that have no nuance to take into account that we all have bad days. People held on form have bad days also.

This is how we bring safeguards into the Mental Health Act. The safeguards are there. If you don't do this amendment, you are taking those safeguards away and putting people at risk.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on NDP motion

number 14. Those in favour? Those opposed? I declare NDP motion number 14 defeated.

We shall move to NDP motion number 15, which is an amendment to section 10, adding a new paragraph 6 to subsection 41.1(2) of the Mental Health Act. Madame Gélinas?

**Mme France Gélinas:** I move that subsection 41.1(2) of the Mental Health Act, as set out in section 10 of the bill, be amended by adding the following paragraph:

"6. Direct that a person be discharged into the community with supports, such as access to community living and appropriate mental health and other rehabilitative resources."

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** Basically, the Consent and Capacity Board needs to have the power to direct that a person be discharged into the community with support. We heard that during the deputations over and over. That means that to ensure that all patients will have access to community living, and appropriate mental health and other rehab resources, we have to give the Consent and Capacity Board the opportunity to do this.

A lot of what we see in this bill is basically copied from what you do with prisoners, that transition to the community. In the equivalent to the Consent and Capacity Board in the justice system, they have the power to direct community resources because this is how you ensure a safe transition. It is not enough to say that the Consent and Capacity Board will basically give orders to discharge people; they have to be able to give orders to discharge people and give them the support they need to succeed in the community. Otherwise, we all know what will happen: It could have drastic consequences on their quality of life or on their lives, or they end up right back where they were before. Nobody wants that.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** Understanding the intent of the motion, I just wanted to add a few points on the record, if I may, Mr. Chair.

We don't believe that this motion is necessary because the Consent and Capacity Board will already be able to direct the officer in charge to provide supervised or unsupervised access to the community or to place the patient on a leave of absence.

Further, hospitals, of course, develop discharge plans for inpatients prior to discharge. These plans are based on the patient's assessed needs and are developed in consultation with them and with their consent.

Finally, the hospital would consult, of course, in the context of doing a discharge plan, with community services and supports to which the patient would be referred, prior to discharge.

As a consequence of those points, Mr. Chair, we would find this motion to be unnecessary.

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** There have been so, so many instances where what you say exists has failed, with catastrophic outcomes. I can give you examples in Sudbury, where people held on form get discharged to a shelter. They don't have a place to live. They don't have a care provider. They don't have access to anything.

Do the hospitals want to do all of what you've just said? Yes, absolutely. But it doesn't always work. By putting it in law, we make sure that what we want and what should be happening actually happens because, as legislators, we have this opportunity to put it in law: to make sure that the best practices, which are there and should continue to be there for the people who need them, actually happen. It is our opportunity to make sure that what we want happening and what should be happening will actually happen.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on NDP motion number 15. Those in favour? Those opposed? I declare NDP motion number 15 defeated.

We shall move to NDP motion number 16, which is an amendment to section 10, adding a new subsection 41.1(2.1) of the Mental Health Act: Madame Gélinas.

**Mme France Gélinas:** I move that section 41.1 of the Mental Health Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Other patients

"(2.1) Despite anything else in this act, any patient who has been in a psychiatric facility for six months or more may apply to the board for an order described in subsection (2), and the board has the power to make such an order."

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** This is a crucial amendment. We have all heard that there are people who are in need of our protection right now. We need to protect the civil liberties of mental health patients and ensure that everyone held in excess of six months in a mental health facility has access to justice. This is the balance that we have been talking about all afternoon.

Many deputants were really clear that the regime—that the CCB review of detention does not and will not apply to information or voluntary patients. Nevertheless, they may be held in a psychiatric facility for an extended period of time, making these patients extremely vulnerable and their state equally deserving of review.

**1710**

There are many patients in our hospital system right now who are not technically involuntarily detained under the Mental Health Act, but who are kept in hospitals for extended periods of time: think months and years. There are many patients who are technically voluntary, but they are kept in hospital under the threat of being certified, and this certainly targets seniors. These highly vulnerable, informal—or what is labelled voluntary—patients may be in hospital against their will, but they have no mechanism to challenge the condition of their stay in hospital. If the involuntary detention provision of the Mental Health Act could not pass constitutional scrutiny under the P.S. v. Ontario case, the situations of patients

who have no access to procedures to review their detention at all, as outlined above, would surely fall afoul of section 7 of the charter.

We submit, and I submit, that voluntary and informal patients are in the same situation as an involuntary patient who has been detained for over six months. These patients suffer from the same conditions of indeterminate detention, which were found to violate the liberty interests of involuntary patients and drew censure from the Court of Appeal, and all without any possibility of review. We recommend that any patient who wishes to apply to the CCB who has been in a psychiatric facility for six months be permitted to access the new review powers outlined in this bill.

I will add some of the comments from the Canadian Civil Liberties Association that says, "Bill 122 must ensure that the Consent and Capacity Board is granted the authority to provide redress and specific remedies to any person held long-term in a psychiatric facility. It should not matter whether this person's status is formally voluntary but certifiable. The goal of the Ontario Court of Appeal decision is clear: to provide meaningful access to justice for long-term detainees."

There are many of those people in our Ontario facilities. They know that if they get formed, what the consequences of that are, so they stay in our hospitals against their wishes, knowing full well that the day that they go through the threshold of this hospital and set foot outside, they're going to be certified and brought right back, often through pretty drastic and dramatic ways, where the SWAT team moves in and the police moves in and it's an ugly scene for all involved.

It just makes sense that in the spirit of what the Court of Appeal told us, to provide meaningful access to justice for long-term detainees applies just as well if you have been certified and if you have not. The trigger will be six months in a psychiatric facility and wanting to avail yourself of the Consent and Capacity Board.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** While I appreciate the sentiments of the member opposite and the spirit of intent that she's describing, we already have rights advice mechanisms in place, and this bill provides them. It's provided to a category of patients, including voluntary and informal patients, to explain their rights to them. So we think that this amendment is, as a consequence, unnecessary.

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** So tell me, what are the rights of a person who has been held against their wish in a hospital, in a psychiatric facility, for more than six months? How do they redress? How do they have their wishes addressed?

**The Chair (Mr. Grant Crack):** Further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** Is that a question to me?

**Mme France Gélinas:** That's a question to anybody on the government side. I mean, you just said that we already have laws in place that protect their liberties. I'm saying that those laws don't exist. If they exist, please share them with me and share them with all of the patients who have been there for more than six months.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? Mr. Fraser.

**Mr. John Fraser:** They do have remedy through the courts. Of course, in relation to this decision, if you believe there's any application on the Supreme Court's decision, I think it will obviously have an impact, as you said earlier on. That's the remedy.

**Mme France Gélinas:** To go through the courts?

**Mr. John Fraser:** Yes.

**The Chair (Mr. Grant Crack):** Okay. Further discussion? There being none, I shall call for the vote. Those in favour of NDP motion number 16? Those opposed? I declare NDP motion number 16 defeated.

We shall move to PC motion number 17, which is an amendment to section 10, paragraph 1, subsection 41.1(3) of the Mental Health Act. Mr. Walker?

**Mr. Bill Walker:** Thank you very much, Mr. Chair.

**The Chair (Mr. Grant Crack):** You're quite welcome.

**Mr. Bill Walker:** I was keen to do this.

I move that paragraph 1 of subsection 41.1(3) of the Mental Health Act, as set out in section 10 of the bill, be struck out and the following substituted:

"1. The nature or quality of the serious bodily harm the patient is likely to cause himself or herself or to another person."

**The Chair (Mr. Grant Crack):** It's "cause to himself or herself or to another person," yes?

**Mr. Bill Walker:** Yes.

**The Chair (Mr. Grant Crack):** Thank you. Further discussion? Madame Gélinas.

**Mme France Gélinas:** I will support the PC motion because right now the language that has been borrowed from public safety in paragraph 1 of the proposed subsection 41.1(3) imports a whole bunch of considerations related to criminal conduct, related to punishment and related to justice. None of that applies to the mental health context.

Mental health patients are sick; they are not being punished. They are not criminals and don't have criminal conduct. They are not being looked after by the justice system; they are being cared for by psychiatric hospitals.

What you have done will serve to further stigmatize mental health patients because whenever a person with a mental illness does something wrong, it makes the headlines of all of the papers and the stigmatization mill goes full tilt. But the truth is that people with a mental illness are the victims of crime way more often than they are the perpetrators, but the language you have brought in this bill is as if they are criminals, they need to be punished and we need a justice system for them.

The tone, the language, all of this is offensive. They are people with an illness. They are not criminals.

**The Chair (Mr. Grant Crack):** Thank you, Ms. Gélinas. Any further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** Chair, I sympathize with the sentiments of the member opposite. This bill, it seems to me, is based on a Court of Appeal decision. In that decision—I'm going to quote it if I may, if you'll indulge me: "The Charter's guarantee of fundamental justice requires that there be a fair procedure to ensure, on a regular and ongoing basis, that the risk to public safety continues and the individual's liberty is being restricted no more than necessary to deal with the risk."

So the language "safety of the public," which you see mirrored here, closely mirrors the language suggested by the Court of Appeal in their decision. Since Bill 122 is an Act to amend the Mental Health Act and the Health Care Consent Act, 1996 further to that decision, that is why this language is here. It's based on a core principle of safety of self and safety of others.

I offer that as a means of explaining why it's here. I hope that's helpful.

**1720**

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on PC motion number 17. Those in favour? Those opposed? I declare PC motion 17 defeated.

We shall move to NDP motion number 18, which is an amendment to section 10, paragraph 1, subsection 41.1(3) of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** Wow, you spitted that out very quickly.

I move that paragraph 1 of subsection 41.1(3) of the Mental Health Act, as set out in section 10 of the bill, be struck out and the following substituted:

"The nature or quality of the serious bodily harm the patient is likely to cause to themself or another person."

**The Chair (Mr. Grant Crack):** Thank you, Madame Gélinas. I believe you forgot the "1" in front of "The nature or quality...."

**Mme France Gélinas:** I did. How could I do that?

**The Chair (Mr. Grant Crack):** We'll just correct that.

**Mme France Gélinas:** "1. The nature or quality of the serious bodily harm the patient is likely to cause to themself or another person."

**The Chair (Mr. Grant Crack):** Thank you very much. I will call this particular motion out of order as the result of the previous motion being defeated after thorough discussion. That is the decision.

Ms. Gélinas, point of order.

**Mme France Gélinas:** Point of order: After all of the discussions we've had in the House about trans persons, you would think that when we bring a motion that talks about "themself," rather than "himself or herself," you would recognize that the world is not always binary and that the motion deserved to be considered for what it stands for.

*Interjections.*

**The Chair (Mr. Grant Crack):** I respect the point that you're making. However, I did rule on the motion, so I thank you for your comments. We can actually take that into consideration as we move forward and conduct government business in the future.

We shall move to NDP motion number 19, which is an amendment to section 10, subsection 41.1(5) of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** I move that subsection 41.1(5) of the Mental Health Act, as set out in section 10 of the bill, be struck out.

**The Chair (Mr. Grant Crack):** Further discussion?

**Mme France Gélinas:** Basically, this section has to be removed. It is unnecessary, given that where a physician proposes a treatment in the context of the patient's present health condition, and the patient or the incapable patient's substitute decision-maker consents to the treatment, the physician can administer the treatment without an order. The provision would only become necessary if the physician sought to hold the patient or the substitute decision-maker to the treatment despite the fact that consent to the treatment was withdrawn. Such a practice would be contrary to the Health Care Consent Act. Where the patient is competent, the law must respect the autonomy of the patient, including their ability to subsequently refuse or withdraw consent to treatment.

Here again, we have to find that balance between the right to care and the right to civil liberty. I think, in order to strike this right balance, the section needs to be removed.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for a vote on NDP motion number 19. Those in favour? Those opposed? I declare NDP motion number 19 defeated.

We shall move to NDP motion number 20, which is an amendment to section 10, subsections 41.1(8) and (8.1) of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** I move that subsection 41.1(8) of the Mental Health Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Independent assessment

"(8) In determining whether to make an order under this section, the board may order an independent assessment of the patient's mental condition or risk, or, without restricting the generality of the foregoing, his or her vocational, interpretation, reintegration, educational, or rehabilitative needs, subject to such terms and conditions as the board may prescribe.

"Independent assessment, rules

"(8.1) The following rules apply to the independent assessment under subsection (8):

"1. The assessment must not be connected to the psychiatric facility.

"2. All concerned parties, including the patient, must agree to the choice of person to conduct the assessment."

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** Basically, this amendment is to ensure that patients' needs are addressed, and to uphold the constitutionality of the new provisions. Remember, the court sent this to us because it was unconstitutional. If we put a piece of legislation forward that is still uncon-

stitutional, we haven't moved forward. This section needs to be corrected in order that the court doesn't send it right back to us.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. McMahon.

**Ms. Eleanor McMahon:** We would argue that it is not necessary to specify this in legislation because the Consent and Capacity Board can already set terms of an independent assessment in ordering that assessment, and that the Consent and Capacity Board, in appointing an independent assessor, would hear from all of the parties as to who they would request as an assessor.

Finally, the Consent and Capacity Board should have the ability to appoint an independent assessor even where one or more of the parties is not in favour of the assessor who is appointed.

We would argue that it is not necessary to specify this in legislation. As a consequence, this motion is not necessary.

**The Chair (Mr. Grant Crack):** Further discussion? Ms. Gélinas.

**Mme France Gélinas:** We all realize what she just said. She just said that a patient can go to the Consent and Capacity Board and ask for a reassessment. But under the rules, if we don't pass this amendment, the Consent and Capacity Board can have an assessor that the patient refuses and can impose an assessor that the patient doesn't want. Can you see how we're turning in circles at a fast speed here?

The court told us that the patient has to have the right to go to the Consent and Capacity Board and ask for changes. You do this by being reassessed and proving to the Consent and Capacity Board that you are ready for that change. But then, if you don't have a say as to who does your assessment, you're no further ahead than we were before we started all of that.

The courts are going to see this for what this is: This is not constitutional. The patient who requests an assessment has to be allowed to agree to the assessor.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on NDP motion number 20. Those in favour? Those opposed? I declare NDP motion number 20 defeated.

We shall move to NDP motion number 21, which is an amendment to section 10, subsection 41.1(10) of the Mental Health Act: Madame Gélinas.

**Mme France Gélinas:** I move that subsection 41.1(10) of the Mental Health Act, as set out in section 10 of the bill, be amended by adding "under paragraph 1 of subsection (2)" after "psychiatric facility" in the portion before clause (a).

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** This is just to clarify the considerations for ordering a patient transfer. It makes it clearer and it makes it fairer.

**The Chair (Mr. Grant Crack):** Further discussion? Mr. Fraser.

**Mr. John Fraser:** Just a quick comment: It's already addressed by motion number 12 that we put forward.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on NDP motion number 21. Those in favour? Those opposed? I declare NDP motion number 21 defeated.

**1730**

We shall deal with section 10, as amended. Is there any final discussion on section 10, as amended, in its entirety? There being none, I shall call for the vote on section 10, as amended. Those in favour? Those opposed? I declare section 10, as amended, carried.

Sections 11, 12, 13 and 14: There are no amendments. Would the committee consider bundling those?

**Mr. Mike Colle:** Bundle, please.

**The Chair (Mr. Grant Crack):** Is there any opposition? There is no opposition that I hear at this point, so we shall bundle sections 11, 12, 13 and 14, as there are no amendments. Any discussion? There is none.

I shall call for the vote. Shall sections 11, 12, 13 and 14 carry? Those in favour? Those opposed? I declare sections 11, 12, 13 and 14 carried.

We shall move to section 15. There is one amendment. It's a government amendment to section 15. It's a new clause, 81(1)(k.5), in the Mental Health Act: Mr. Fraser.

**Mr. John Fraser:** I move that the amendments to subsection 81(1) of the Mental Health Act, as set out in section 15 of the bill, shall be amended by the following clause:

"(k.5) prescribing a person for the purposes of subsection 39(14);"

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** Is this your opportunity to see psychologists or nurses?

**Mr. John Fraser:** It does provide the order in council to specify additional persons that could sit on the panels. It does give regulatory power to add any future regulated health professional to sit on the Consent and Capacity Board.

We discussed it earlier in terms of the capacities of different professions to participate. It's within the scopes of practice of a number of professions, and that's something that we believe needs to be considered.

**The Chair (Mr. Grant Crack):** Madame Gélinas.

**Mme France Gélinas:** Are we going to put on the record that former patients will also be considered?

**The Chair (Mr. Grant Crack):** Further discussion?

**Mme France Gélinas:** That was a question, Mr. Chair.

**Mr. John Fraser:** I think that's subject to regulatory—if you're talking about regulatory process, I can't really answer that question. It's on the record, so I can't answer that question for you. It's providing those powers.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, Mr. Fraser, would you be so kind as just to read what you're moving into the record one more time, as there was some discrepancy, I believe.

**Mr. John Fraser:** I move that the amendments to subsection 81(1) of the Mental Health Act, as set out in section 15 of the bill, be amended by adding the following clause:

"(k.5) prescribing a person for the purposes of subsection 39(14);"

**The Chair (Mr. Grant Crack):** Thank you very much. I take it there's no more discussion? The motion is clear. I shall call the vote.

**Mme France Gélinas:** Recorded vote.

**The Chair (Mr. Grant Crack):** There has been a request for a recorded vote.

**Ayes**

Anderson, Colle, Fraser, Kiwala, McMahon, Walker, Yurek.

**Nays**

Gélinas.

**The Chair (Mr. Grant Crack):** I declare government motion 22 carried.

There is one amendment, which just passed, to section 15. We shall deal with section 15, as amended. Any further comments? There being none, I shall call the vote. Those in favour of carrying section 15, as amended? Any opposed? I declare section 15, as amended, carried.

We shall move to section 16, with one amendment. It's amendment NDP motion number 23 to section 16: a new section 85 of the Mental Health Act. Madame Gélinas.

**Mme France Gélinas:** I move that the Mental Health Act, as amended by section 16 of the bill, be further amended by adding the following section:

"Transition, analysis

"85. The minister shall ensure that a careful analysis is made of the impact of the amendments to this act that are effective on December 21, 2015 with respect to system capacity, staffing resources and patient needs."

**The Chair (Mr. Grant Crack):** Further discussion? Madame Gélinas.

**Mme France Gélinas:** Last week, MPP Forster asked Mr. Sean Court of the ministry whether additional resources would be provided to hospitals during a Consent and Capacity Board hearing. He says, "As part of our consultations, we've definitely heard from the four specialty psychiatric hospitals that they're concerned about the implications on them in terms of resourcing. At this point in time, there are no additional resources that are contemplated to go along with the proposed amendment."

The Ontario Hospital Association addressed the same concern. They said, regarding staffing, health record resources and patient flow, that member hospitals have indicated to the Ontario Hospital Association that their resources will be significantly impacted. Additional staffing may be needed, and we need to ensure that hospitals have the resources they need to uphold the charter rights of patients, and that corners are not cut.

Further to this, some calculations were done. For a 36-bed hospital—36 psychiatric beds within a hospital—they did the math and they found that the bill, as it is, would cost them about an extra $150,000 a year because of the changes that we have made to the Consent and Capacity Board. If you multiply this by the number of psychiatric beds that we have in Ontario, we are talking a $20-million burden that we have just put on our psychiatric units within our hospitals.

I've been in the system for too long, Chair. That $20 million is not going to come from heart surgery, or orthopedics or cardiology; that $20 million is going to come from the care that the people in those psychiatric beds are receiving. It is all good to put forward a piece of legislation that will respect the law and make sure that our Mental Health Act is constitutional, but it is all for nothing if, on the ground, our hospitals are not able to carry that through.

At the end of the day, those boards are really resource-intensive: You have lawyers on both sides that come; you need to prepare; the psychiatrists have to be there; the care team has to be there. And now we have added to this.

My first question—if they are to take questions—is that the people from the hospital sector are telling us that this is a $20-million ask that you are putting on the hospitals that provide psychiatric beds. How do you intend to deal with this? Are your numbers different than ours, and have you done the math?

**The Chair (Mr. Grant Crack):** Further discussion? Mr. Fraser.

**Mr. John Fraser:** I share the concern that we be able to serve any patient in our health care system, no matter what their circumstance or the challenge that they have in life, and I know that the specialty hospitals have come forward and made an estimate of $20 million.

I think as we go through a process of our yearly budgeting—and I've been around long enough to know a couple of things: In a number of circumstances, you can overestimate what your needs and your costs are. It's good to see what, in reality, you need. As part of the budgeting process, and the funding process, we look at those pressures—I think it's now on a quarterly basis—on hospitals. That kind of level of reporting is there, so I don't believe we need this in legislation.

I'm not quite sure what specifically the burden is—admittedly, there will be some—but I think it can be adequately addressed through the process that we have, from a budgeting perspective, when working with our hospitals.

**1740**

**The Chair (Mr. Grant Crack):** Any further discussion? Madame Gélinas.

**Mme France Gélinas:** It's a little bit disappointing that a member of the government would not know what the burden is going to be, once we pass the law that they have written. The burdens are going to be significant, and resources are going to be needed to address them.

**Mr. John Fraser:** I said that I understood that, but if you can tell me specifically what the dollars are—I mean, you did say an estimate of $100,000, but what specifically was the cost that was incurred in that? Will

there be more involuntary patients in the hospitals? I don't think that that's what this legislation addresses.

The reason I say I'm not entirely sure about what those costs are is because, when I look at this legislation that we have going forward and how that's going to impact them, I don't know all the ways that it's going to impact them. I think, in fact, it may have impacts not necessarily in the hospital system but outside it that we will have to address. So I don't think that we would necessarily need to focus in that one area. Through the budgeting process and the way that we look at allocating resources, I think that we can address it.

So it's not that I'm saying that there are no pressures that are there. I'm just not sure that the pressures they're saying they have are exactly the pressures that we have. Maybe we have pressures, as you suggested earlier, outside of the hospitals, and maybe that's where the actual pressures exist. So that was my point.

**The Chair (Mr. Grant Crack):** Any further discussion? Ms. Gélinas.

**Mme France Gélinas:** The amendment only seeks that we ensure that a careful analysis is made of the impact of the amendments.

**The Chair (Mr. Grant Crack):** Further discussion? There being none, I shall call for the vote on NDP motion number 23. Those in favour? Those opposed? I declare NDP motion number 23 defeated.

We shall deal with section 16. There were no amendments. Further discussion on 16, in its entirety? There being none, I shall call for the vote. Shall section 16 carry? Those in favour? Any opposed? Section 16 is carried.

We shall move to section 17 and PC amendment number 24, which is new subsections (2) and (3), subsection 18(3), Health Care Consent Act, 1996: Mr. Yurek.

**Mr. Jeff Yurek:** I move that section 17 of the bill be amended by adding the following subsections:

"(2) Subsection 18(3) of the act is amended by adding 'or' at the end of clause (b) and by repealing clauses (c) and (d) and substituting the following:

"'(c) until the board has rendered a decision in the matter.'

"(3) Section 19 of the act is repealed and the following substituted:

"'Order authorizing treatment pending appeal

"'19.(1) If an appeal is taken from a board or court decision that has the effect of authorizing a person to consent to a treatment, the treatment may be administered before the final disposition of the appeal, unless the court to which the appeal is taken orders otherwise.

"'Criteria for order

"'(2) The court shall make an order under subsection (1) if the court is satisfied that there is merit to the appeal and the administration of treatment before the final disposition of the appeal is likely to cause irreparable harm.'"

**The Chair (Mr. Grant Crack):** Thank you very much, Mr. Yurek. Unfortunately, I'm going to rule this out of order, as this amendment does seek to open up sections of the act—specifically, subsections 18 and 19—which are not open in this particular bill, Bill 122. Therefore, it is beyond the scope of the bill.

There are no amendments to section 17. Any further discussion on section 17? There being none, I shall call the vote. Shall section 17 carry? Those in favour? Any opposed? Section 17 is carried.

Section 18: Any comments? There being none, I shall call the vote. Shall section 18 carry? Those in favour? Those opposed? I declare section 18 carried.

Section 19 is the short title. Any discussion on the short title? There being none, shall section 19 carry? Those in favour? Those opposed? There being none, I declare section 19 carried.

We shall move to the title of the bill. Any discussion on the title? There being none, I shall call the vote. Shall the title of the bill carry? Those in favour? Those opposed? I declare the title of the bill carried.

I shall call for the vote on Bill 122, as amended: Shall Bill 122, as amended, carry? Those in favour? Those opposed? There being none, I declare Bill 122, as amended, carried.

Shall I report the bill, as amended, to the House? Those in favour? Those opposed? I declare that I shall report the bill, as amended, to the House. Carried.

I would like to thank everyone for their great hard work this afternoon. I wish you all the best in the evening. We shall see you tomorrow.

**Interjection:** Ho, ho, ho.

**The Chair (Mr. Grant Crack):** Ho, ho, ho. And I apologize for my phone. It's a brand new phone, it's heating up already, it won't vibrate and you can't get the sound off—so this is great.

This meeting is adjourned.

*The committee adjourned at 1746.*

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