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**Official Report  
of Debates  
(Hansard)**

**Thursday 24 March 2016**

**Journal  
des débats  
(Hansard)**

**Jeudi 24 mars 2016**

**Standing Committee on  
Justice Policy**

Health Information  
Protection Act, 2016

**Comité permanent  
de la justice**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

**COMITÉ PERMANENT  
DE LA JUSTICE**

Thursday 24 March 2016

Jeudi 24 mars 2016

*The committee met at 0901 in committee room 1.*

**HEALTH INFORMATION  
PROTECTION ACT, 2016**

**LOI DE 2016 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ**

Consideration of the following bill:

Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004 / Projet de loi 119, Loi visant à modifier la Loi de 2004 sur la protection des renseignements personnels sur la santé, à apporter certaines modifications connexes et à abroger et à remplacer la Loi de 2004 sur la protection des renseignements sur la qualité des soins.

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. As you know, we are here to consider clause-by-clause amendments for Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004.

We have a number of amendments and also a late submission by the NDP which we will entertain later; that's, I think, 18.3. We now offer the floor, unless there are any general comments, to the PC side for motion 0.1.

**Mr. Randy Hillier:** I just have some general comments.

**The Chair (Mr. Shafiq Qaadri):** Actually, just before we move on that, with the will of the committee, we need to proceed directly to the schedules, which is schedule 1, and we'll stand down sections 1, 2 and 3 for consideration, which we'll return to after.

**Mr. Randy Hillier:** Why are we standing down?

**The Chair (Mr. Shafiq Qaadri):** I think, presumably, because there are no amendments offered so far.

**Mr. Randy Hillier:** Okay.

**The Chair (Mr. Shafiq Qaadri):** I take it that's the will of the committee? General comments before we invite the actual motion?

**Mr. Randy Hillier:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Go ahead, Mr. Hillier.

**Mr. Randy Hillier:** Yes. I just want to point out that there are a substantial number of amendments offered up by all parties—none more so than the government—on this bill. I think, as we've heard from some delegations, that the government might want to reconsider this bill and withdraw it and spend some time and actually get the bill right instead of inundating the committee with a substantial number of amendments. They obviously proceeded far too quickly and in haste in drafting this bill.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hillier. Are there any further comments before we proceed to consideration of the motions, clause-by-clause? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I feel that we are ready to proceed. I just want to point out that this is part of the process. Going through the entire bill and looking at the various pieces and making suggestions is part of the process to ensure that we are moving forward with what we want to. We're very happy with what we're doing.

**The Chair (Mr. Shafiq Qaadri):** We'll now proceed, as mentioned, to the consideration of item 4, schedule 1, for which we have a PC motion labelled as 0.1. Mr. Hillier.

**Mr. Randy Hillier:** Thank you. I'll just read out the motion; then I'll have my colleague add some comments to it.

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

“(4.1) Section 12 of the act is amended by adding the following subsection:

“Prescribed organizations

“(5) Subsections (2), (3) and (4) apply with necessary modifications to prescribed organizations.”

**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek?

**Mr. Jeff Yurek:** We brought this motion forward out of a concern from the Ontario Medical Association, which wanted to ensure that the doctors and providers aren't exactly going to be the ones who have to notify patients of breaches that they had no involvement in and to ensure that only the health information custodians will have the responsibility to notify.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yurek. Any further comments? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Yes, Chair. We really feel that this motion is not necessary because this is about making sure that the process is streamlined and that it

works efficiently. We feel that the advisory committee is already going to be dealing with things on an individual basis and will be making recommendations to the minister about specific notice requirements. It's all about streamlining it and making sure the process is efficient. We feel that it's not necessary to move in this direction.

**The Chair (Mr. Shafiq Qadri):** Thank you, Ms. Naidoo-Harris. Any further comments before we proceed to the vote? Mr. Hillier.

**Mr. Randy Hillier:** Let me just get this clear: If there is a breach of information, under the way the bill is presently structured, there is not clarity that other people who were not involved with the breach may also have a responsibility to inform people of a breach that they were not involved with and may not have any information on, and the government members think that that is a streamlined method.

**The Chair (Mr. Shafiq Qadri):** Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Chair, I just want to point out that the health information custodians are already required to notify individuals and the IPC of privacy breaches for non-EHR systems on their premises. That's already in place—

**Mr. Randy Hillier:** Could you move the microphone a little bit closer? I can't hear you at all.

**Ms. Indira Naidoo-Harris:** Sure. That system is already in place, and notifications will be happening.

**Mr. Randy Hillier:** I couldn't hear anything there.

**The Chair (Mr. Shafiq Qadri):** Ms. Naidoo-Harris, can I ask you to repeat your remarks?

**Ms. Indira Naidoo-Harris:** Oh, sorry. I'm just pointing that health information custodians are already required to notify individuals and the IPC of privacy breaches for non-EHR systems on their premises.

The advisory committee will be asked to make recommendations to the minister about specific notice requirements in the rare circumstances of a privacy breach within a prescribed organizations. The subjects will be dealt with on an individual basis, and the parameters are there to ensure that this is dealt with appropriately.

**The Chair (Mr. Shafiq Qadri):** Madame Gélinas, would you like the floor?

**M<sup>me</sup> France Gélinas:** I will be supporting this motion, for the simple fact that people want clarification in the law, not having to wait and be at the whim of the minister of the day as to whether they will be forced to do things that they know nothing about.

This bill needs a lot of work in order to achieve what the goals are. The goals are good; the bill is not going to bring us there.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Hillier?

**Mr. Randy Hillier:** Clearly, the bill was done in haste. I understand that there was a time frame by other authorities that the government had to act on this, but it seems that the government is willing and wanting to continue to proceed in haste and create another bill, another piece of legislation, that will just end up in front of the courts once again, and then they'll have to back-

track and backpedal and correct, once again, the mistakes that happened out of haste.

As I said from the outset, the significant numbers of amendments offered up by the government side on this bill clearly demonstrate and are evidence that they had very much difficulty in drafting this bill. Let's not run into the same mistake once again.

**The Chair (Mr. Shafiq Qadri):** Thank you, Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Yes, Chair. I believe that we're discussing motion 0.1 right now and we're moving forward with the discussion of this bill. I just want to make sure that our members opposite are aware that that's what we're discussing. I think it's important that we discuss this motion as it appears before us.

As far as the overall process is concerned, as I mentioned earlier, this is part of the process. We have been consulting with various parties and listening to the members opposite. I think what is before us now in terms of the proposed amendments and so on is a result of those consultations and those conversations. So the government is ready to move forward with the bill in terms of going through the various motions and amendments here today.

**0910**

**The Chair (Mr. Shafiq Qadri):** Mr. Yurek?

**Mr. Jeff Yurek:** Just further to that comment made by the government side, I think it clearly shows that you didn't partake in consultation until after the bill was drafted and on the table. Otherwise, your amendments would be minimal.

The fact that you said this was through consultation after second reading of the bill obviously shows that there was little involvement with people outside of the bureaucracy in creating this bill.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Yurek. Unless there are further comments, we'll proceed to the vote on the PC motion labelled 0.1. We'll proceed to the vote. Those in favour of PC motion 0.1? Those opposed? PC motion 0.1 falls.

We now proceed to consideration of NDP motion 1: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that clause 17(2)(a) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(7) of schedule 1 to the bill, be amended by striking out "and" at the end of subclause (ii) and by adding the following subclause:

"(ii.1) is not contrary to this act or another law, and"

**The Chair (Mr. Shafiq Qadri):** Comments on NDP motion 1?

**M<sup>me</sup> France Gélinas:** Sure. Basically, the motion would require the agent of a health information custodian to collect, use, disclose, retain or dispose of personal information in a manner that is not contrary to this act or another law.

This is a request that comes from the Information and Privacy Commissioner. I will quote from his deputation to us: Bill 119 "does not explicitly require that agents only collect, use and disclose personal health information

where not contrary to the limits imposed by PHIPA or another law....

“Agents ... may include regulated health professionals, health researchers, electronic service providers, health information network providers and other third-party service providers,” including “health record storage companies” and “paper shredding companies.” It includes both professionals and independent businesses.

The Information and Privacy Commissioner states, “Given the diverse nature of agents of health information custodians, it is recommended that the duty to comply with PHIPA as well as other laws be explicitly imposed on all agents of health information custodians as well as on the health information custodians on whose behalf they may act.

“Further, removing the direct obligation for agents of health information custodians to comply with PHIPA and other laws may weaken the existing accountability framework.”

The proposed wording of the amendment was presented to us and, I think, has great value. Information does travel, even if it is in an electronic form. Lots of different companies and businesses will have access to that information. This will make it safer for all of us to share information in a way that we know will remain secure.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on NDP motion 1? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** We will be rejecting this motion. I want the member opposite to know that we actually agree with the motion but just have concerns about its drafting.

We will be proposing and have submitted motion 2, which essentially has the same effect and intent but, we feel, just provides a clearer approach to legislative numbering. We’re hoping that the NDP will agree with us on this.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any further comments? We will proceed, then—Madame Gélinas.

**M<sup>me</sup> France Gélinas:** We are debating this motion right now. This is the language that the Information and Privacy Commissioner asked us to consider. I have read your motion and it is not the same. I cannot support what they’re putting forward. This is what the Information and Privacy Commissioner advised us we should bring forward. He has informed this bill extensively, and I think he should be listened to.

**The Chair (Mr. Shafiq Qaadri):** Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I just want to thank the member opposite for her comments. I’m very respectful of what she has to say. I feel, and our side feels, that motion 2 does make it clear that agents, in addition to health information custodians, are required to comply with PHIPA and other laws. We just feel that motion 2 will clarify the situation in terms of numbering. That’s our position.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** I just want to be clear here. The government recognizes the value of this motion, they support this motion, but they will vote against it in that their language is clearer and has greater certainty than the language from the Information and Privacy Commissioner. I just want to get this clear: that the staffers on the Liberal side don’t have much regard—or the government doesn’t have much regard—for the competency of the Information and Privacy Commissioner.

**The Chair (Mr. Shafiq Qaadri):** Are there any further comments? Otherwise, we’ll proceed to the vote for NDP motion 1. Those in favour of NDP motion 1? Those opposed to NDP motion 1? I declare NDP motion 1 to have lost.

We now proceed to government motion 2. Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that subsection 17(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(7) of schedule 1 to the bill, be struck out and the following substituted:

“Restriction, collection, use, etc. by agents

“(2) Subject to any exception that may be prescribed, an agent of a health information custodian may collect, use, disclose, retain or dispose of personal health information only if,

“(a) the collection, use, disclosure, retention or disposal of the information, as the case may be,

“(i) is permitted by the custodian in accordance with subsection (1),

“(ii) is necessary for the purpose of carrying out his or her duties as agent of the custodian,

“(iii) is not contrary to this act or another law, and

“(iv) complies with any conditions or restrictions that the custodian has imposed under subsection (1.1); and

“(b) the prescribed requirements, if any, are met.”

I apologize for the way I read the numbering.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Naidoo-Harris. Apology accepted. Are there any further comments on government motion 2? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I really don’t understand why we want to introduce into this bill “Subject to any exception that may be prescribed.” Whenever you have a bill like this, that is already very, let’s say, poorly written, and has gaping holes in it that will end up in front of the courts because people don’t agree with the way that you say the bill wants to do something—and I want to get there with you, but this is not what you have written down. Then, to make matters worse, you introduce language such as “subject to any exception that may be prescribed” in regulation. That takes away any reassurance that the law will be there to protect our personal information when regulations can be done that nobody will know about, or very few will know about.

This is not what the Information and Privacy Commissioner said was needed in order to protect the personal information of Ontarians. I don’t know why you are doing this, but you are going in the opposite direction of your stated goal when you bring motions like this forward.

0920

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier, then Ms. Naidoo-Harris.

**Mr. Randy Hillier:** I think I have the answer for you, Madame Gélinas. That is: They don't know what they're doing, and they're hoping that sometime down the road they can find someone who knows what they're doing about this bill. That's why they're leaving it all up to regulations.

For anyone to argue that the first government motion, motion 2, provides greater certainty, clarity and efficacy than NDP motion 1—read those two. Put those two motions in front of you and take a look. Truly, tell me which one provides greater certainty and clarity. It is not the government motion. When you have to take 200 words instead of 25 words to try to explain what it is that you're doing, you're adding needless complication and confusion into the bill.

My assertion is that they're leaving this to be defined later because they don't know what they're doing today.

**The Chair (Mr. Shafiq Qaadri):** Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Yes, Chair. I just want to point out that, basically, the only change is number (iii), which is worded, "is not contrary to this act or another law, and;" What this motion does is essentially clarify that agents can only collect, use or disclose personal health information if it is not contrary to this act or another law. My understanding is that the Information and Privacy Commissioner has been consulted on this and feels this is appropriate.

**The Chair (Mr. Shafiq Qaadri):** Madame Gélinas?

**M<sup>me</sup> France Gélinas:** You're right about what you just said, but you skipped the beginning, which is, "Subject to any exception that may be prescribed..." If you're willing to take that part out and then make it that this is in law, that it is not contrary to an act in another law, then I would say you're getting closer to what the Information and Privacy Commissioner said. But as long as you keep "Subject to any exception that may be prescribed"—as long as you open this wide door to do whatever you want in regulations, then it's all for none.

**The Chair (Mr. Shafiq Qaadri):** Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Chair and the member opposite: I just want to draw your attention to the fact that the only thing that we're changing in the previous motion 1 that the NDP moved forward—the numbering was (ii.1). What we've done is just changed that numbering to (iii). That's all we've done in this; that's the only change.

**The Chair (Mr. Shafiq Qaadri):** Are there further comments on government motion 2 before we proceed to the vote?

Mr. Rinaldi, I take it you're hailing a supporter and not asking for comment time?

**Mr. Lou Rinaldi:** No comment.

**The Chair (Mr. Shafiq Qaadri):** All right. We'll proceed to the vote on government motion 2. Those in favour of government motion 2? Those opposed? Government motion 2 carries.

We'll proceed now to NDP motion 3. Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I move that subsections 17.1(2) and (3) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be struck out and the following substituted:

"Termination, suspension, etc. of employed members

"(2) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian employs a health care practitioner who is a member of a college, the health information custodian shall give a written report of any of the following events to the college within 30 days of the event occurring, setting out the reasons for the termination, suspension or disciplinary action and the grounds upon which the health information custodian's belief is based or the nature of the allegations being investigated, as the case may be:

"1. The employee is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

"2. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee or takes place during the course of, or as a result of, an investigation conducted by or on behalf of the health information custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

"Member's privileges revoked, etc.

"(3) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian offers privileges to or associates in a partnership, a health profession corporation or otherwise with a health care practitioner who is a member of a college, the custodian shall give a written report of any of the following events to the college within 30 days of the event occurring, setting out the reasons for the revocation, suspension, restriction, dissolution or relinquishment and the grounds upon which the health information custodian's belief is based or the nature of the allegations being investigated, as the case may be:

"1. The member's privileges are revoked, suspended or restricted, or his or her association is dissolved or restricted, as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member.

"2. The member voluntarily relinquishes or restricts his or her privileges or practice, and the health information custodian has reasonable grounds to believe that the relinquishment or restriction is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member or takes place during the course of, or as a result of, an investigation conducted by or on behalf of the health information

custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member.”

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

**M<sup>me</sup> France Gélinas:** For me, this adds clarity to the proposed subsection 17 by adopting refined language that was brought to us by CPSO. CPSO states, and I agree, that these refinements are needed to ensure consistency with parallel provisions in other statutes. “The College of Physicians and Surgeons of Ontario welcomes the new provision requiring reporting to the college of privacy breaches by practitioners. However, the college suggests that the language be made consistent with the mandatory reporting provision already in the Health Professions Procedural Code of the RHPA—that is, in section 85.5—and in section 33 of the Public Hospitals Act to avoid confusion and inconsistency as to when reporting is provided.”

We already have, in the Health Professions Procedural Code of the RHPA and in the hospitals act, language that is in line with—I would say, identical to—the language I have just read into the record. Rather than introducing new language in Bill 119, let’s bring consistency to this very important provision of the bill.

**The Chair (Mr. Shafiq Qaadri):** Yes, Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Thank you, Chair, and thank you to the member opposite. I do realize that the member opposite seems to feel that this is just refining the language, but I have to point out that these are privacy breaches that this particular section refers to, not professional misconduct. I think that this calls for a specific set of guidelines. What the member opposite is proposing is really going to just insert more red tape into the process, and I think it’s really very important that we try to streamline things as much as possible. We just don’t feel that, when it comes to privacy breaches, it warrants this level of minute detail. We feel that this motion will just make things more unwieldy.

**The Chair (Mr. Shafiq Qaadri):** Further comments on NDP motion 3? Madame Gélinas and then Mr. Hillier and then Mr. Yurek.

**M<sup>me</sup> France Gélinas:** Go ahead.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek or Mr. Hillier?

**Mr. Jeff Yurek:** Go ahead.

0930

**Mr. Randy Hillier:** Everybody wants to get in, but we’re all being so polite.

If I heard this correctly, the government finds that privacy breaches are nothing that should be overly detailed, and there is no sense in defining or clarifying such an important thing as a privacy breach with any certainty.

It’s pretty astonishing, seeing that the whole bill is intended to correct and to prevent breaches of privacy. Once again, we hear them arguing against themselves and arguing against their own bills. It appears that

another episode of the Clone Wars has descended upon the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I just wanted to point out that employees actually have a number of tools at their disposal. They may rely on a variety of HR measures that they can use, if the situation warrants.

We feel that this motion would really make it harder for individuals to be held to account in the event of a privacy breach. By trying to match the words of the RHPA, this motion would set out a high threshold for reporting, which would make things unwieldy and slow things down.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further comments on NDP motion number 3? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I have such a hard time sitting here and hearing language where you refer to privacy breaches as “minute details.”

Let me tell you: For people who have their personal health information and privacy breached, it changes their lives. It changes the way that they interact with the health care system forever. It breaks this necessary relationship of trust in order for care to take place.

What the colleges are asking is very reasonable. We have language already. What you’re doing with this bill is making money for lawyers who will be in front of the courts arguing that one set of rules has precedence over another set of rules. The loser in this will always be the same person: the person who did nothing wrong but had his personal information broadcast on the front page of the Toronto Star.

This is wrong. You know that it’s wrong. You want to do the right thing, but your bill is not doing this. You have to be willing to look at the fact that there are good ideas outside of the Liberal Party. You have to be willing to listen, especially when it comes to something as fundamental as the trust that needs to be there in order for quality care to take place. You are missing the boat.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Chair, I just want to make sure that I am setting the record straight: Under no circumstances did I refer to privacy breaches as “minute details.”

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Yurek?

**Mr. Jeff Yurek:** What I did hear from the other side—and thank goodness for the colleges that are in place whose mandate is to protect the public and for their ideas coming forward—is that a privacy breach isn’t professional misconduct. I would challenge the government on that side that as a health care professional, if I was to breach any sort of privacy, that would be professional misconduct. I think that we need to listen to the colleges. Perhaps it goes back to the fact that this government failed to properly consult with the regulatory colleges before bring this bill forward, and I think that’s a mistake.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Yurek. Any further comments before we proceed to a vote on NDP motion number 3? Seeing none, we proceed to the vote.

Those in favour of NDP motion number 3? Those opposed to NDP motion number 3? I declare NDP motion number 3 to have been lost.

We now proceed to PC motion 3.1: Mr. Hillier.

**Mr. Randy Hillier:** Thank you, Chair. I move that subsections 17.1(2), (3) and (4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be struck out and the following substituted:

“Termination, suspension, etc. of employed members

“(2) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian employs a health care practitioner who is a member of a college, the health information custodian shall give written notice of any of the following events to the college within 30 days of the event occurring:

“1. The employee is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

“2. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction, as the case may be, is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

“3. The employee resigns or restricts his or her practice and the health information custodian has reasonable grounds to believe that the resignation or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of the custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

“Contents of notice

“(3) The notice shall set out,

“(a) the reasons for the termination, suspension or disciplinary action, in the case of an event described in paragraph 1 of subsection (2);

“(b) the grounds upon which the health information custodian’s belief is based, in the case of an event described in paragraph 2 of subsection (2);

“(c) the nature of the allegations being investigated, in the case of an event described in paragraph 3 of subsection (2); and

“(d) the other additional matters, if any, that are prescribed.

“Member’s privileges revoked, etc.

“(4) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian offers privileges to, or associates in partnership with, a health profession corporation or a health care practitioner who is a member of a college, the custodian shall give written notice of any of the

following events to the college within 30 days of the event occurring:

“1. The member’s privileges are revoked, suspended or restricted, or his or her association is dissolved or restricted, as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.

“2. The member relinquishes or voluntarily restricts his or her privileges or association and the health information custodian has reasonable grounds to believe that the relinquishment or restriction, as the case may be, is related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.

“3. The member relinquishes or voluntarily restricts his or her privileges or association and the health information custodian has reasonable grounds to believe that the relinquishment or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of the custodian into allegations related to the unauthorized collection, use, disclosure, retention or disposal of personal health information by the corporation or the member, as the case may be.

“Contents of notice

“(5) The notice shall set out,

“(a) the reasons for the revocation, suspension or restriction, in the case of an event described in paragraph 1 of subsection (4);

“(b) the grounds upon which the health information custodian’s belief is based, in the case of an event described in paragraph 2 of subsection (4);

“(c) the nature of the allegations being investigated, in the case of an event described in paragraph 3 of subsection (4); and

“(d) the other additional matters, if any, that are prescribed.”

I’ll turn that over to my colleague for further comment.

**0940**

**The Chair (Mr. Shafiq Qadri):** Thank you. Mr. Yurek.

**Mr. Jeff Yurek:** Yes, we have brought this motion forward—it is much like motion 3 from the NDP, with a little bit of different language put forward. Considering the government doesn’t want to listen to the College of Physicians and Surgeons of Ontario, perhaps we can take a look at this.

**The Chair (Mr. Shafiq Qadri):** Thank you. Other—Madame Gélinas.

**M<sup>me</sup> France Gélinas:** The NDP and the PCs—we’re both trying to set out the requirement of the notice. We’re both trying to make sure that when the notices are sent to the college, they will have the reason for the action. They will have the grounds upon which it is to be based. They will have the information needed for the college to do its work.



The way the bill is written now, you could simply send a note that says there's been a breach, and a name, and that will be it. That will be all. The colleges have asked for that information to be included in the bill so that they can do their work. The least we can do is to make sure that the bill gives the tools to the people who will be doing their work—the colleges with all the regulated health professionals—to do their work, and I hope you will support that.

Also, I just want to draw attention to page 4, 17.1(1), the section we're talking about right now. It starts with:

“‘College’ means,

“(a) in the case of a member of health profession regulated under the Regulated Health Professions Act, 1991, a college of the health profession named in schedule 1 to that act, and

“(b) in the case of a member of the Ontario College of Social Workers and Social Service Workers, that college.”

I want to draw everybody's attention to this because, later on in the bill, you will see that we forget about the social workers. So in that section where you have to report a breach to the college, we include all the regulated health professions and the College of Social Workers, which is not under the Regulated Health Professions Act. Later on in the bill, we forget the social workers.

**The Chair (Mr. Shafiq Qadri):** Thank you, Madame Gélina. Further comments? Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Thank you to the member opposite for her comments. Again, we feel that this motion would simply make it harder for individuals to be held in the account of a privacy breach. We feel that it sets out a high threshold for reporting professional misconduct. We know that employers may rely on a variety of HR measures and tools, and HIPA ensures that these actions will trigger a notice to the colleges. So we feel that these issues are covered.

**The Chair (Mr. Shafiq Qadri):** Madame Gélina.

**M<sup>me</sup> France Gélina:** To rely on HR tools—have you ever gone into the field and looked at what the HR department looks like at some of our health care providers? They are non-existent. They are the after-job of a secretary who gives appointments to people who call in. You are making this out to be as if everybody who will be affected by this bill has an HR department. That's not true; that's not the case. It does not exist. That's why we have laws that tell people exactly what they have to do and how they have to do this, and not rely on HR departments that don't exist.

**The Chair (Mr. Shafiq Qadri):** Thank you. Further comments before we proceed to the vote on PC motion 3.1? Seeing none, we'll proceed to the vote, then. Those in favour of PC motion 3.1? Those opposed? I declare PC motion 3.1 to have lost.

We will proceed now to the government motion labelled as 4R, “R” meaning replacement motion. Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that section 17.1 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(8) of schedule 1 to the bill, be amended by adding the following subsections:

“Same, custodian's agent

“(2.1) Subject to any exceptions and additional requirements, if any, that are prescribed, a health information custodian shall give written notice of an event described in subsection (2.2) to a college if,

“(a) the health information custodian is a medical officer of health of a board of health within the meaning of the Health Protection and Promotion Act; and

“(b) a health care practitioner, who is a member of the college, is employed to provide health care for the board of health and is an agent of the custodian.

“Same

“(2.2) The health information custodian shall give written notice of any of the following events to a college within 30 days of the event occurring:

“1. The agent's employment is terminated or suspended, or the agent is subject to disciplinary action with respect to his or her employment, as a result of his or her unauthorized collection, use, disclosure, retention or disposal of personal health information.

“2. The agent resigns from his or her employment and the health information custodian has reasonable grounds to believe that the resignation is related to an investigation or other action by the custodian with respect to an alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the agent.”

**The Chair (Mr. Shafiq Qadri):** Comments on government motion 4R? Ms. Naidoo-Harris, then Mr. Hillier.

**Ms. Indira Naidoo-Harris:** We are actually moving this forward because we feel this amendment ensures that agents working in these public health units are reported to their college in the same way as agents working in other health care settings—for example, in hospitals—where the health information custodian is the employer.

The current provision just requires health information custodians to notify a regulatory agent, if an agent employed by the custodian is—as a result of a privacy breach.

We just feel that this is important.

In some public health units, for example, Chair, the medical officer of health is the health information custodian but is not the employer of the agent whose privacy breach has led to the disciplinary action. In these cases, a municipality—for example, the city of Toronto—is the employer of the agent.

This motion clarifies that the medical officer of health has the notice obligation in respect of its agents who are members of colleges. It just makes a clarification that we feel is necessary.

**The Chair (Mr. Shafiq Qadri):** Mr. Hillier.

**Mr. Randy Hillier:** If I could also ask for a recorded vote on this one. I just want everybody to be able to demonstrate that regardless of which party offers up an amendment, we can exercise discretion and exercise our

judgment and support amendments from all sides—by the PC colleagues. Thank you.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Hillier. We'll proceed to the vote on government motion 4R—recorded vote.

### Ayes

Berardinetti, Delaney, Gélinas, Hillier, Martins, Naidoo-Harris, Vernile, Yurek.

**The Chair (Mr. Shafiq Qadri):** Government motion 4R carries.

*Interruption.*

**The Chair (Mr. Shafiq Qadri):** That was in celebration.

To the government members: Would they wish to withdraw government motion 4, as I believe it is replaced?

**Ms. Indira Naidoo-Harris:** Yes.

**The Chair (Mr. Shafiq Qadri):** Ms. Naidoo-Harris, are you willing to withdraw government motion 4, as we replaced it?

**Ms. Indira Naidoo-Harris:** Yes.

**The Chair (Mr. Shafiq Qadri):** Government motion 4 is now replaced—removed.

We now go to government motion 5: Ms. Naidoo-Harris.

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**Ms. Indira Naidoo-Harris:** I move that the English version of paragraph 3 of subsection 55.2(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(12) of schedule 1 to the bill, be amended by striking out “personal health information accessible by means of the electronic health record” and substituting “personal health information that is accessible by means of the electronic health record”.

**The Chair (Mr. Shafiq Qadri):** Comments on government motion 5? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** We just feel that this is a technical motion. It corrects some inconsistent language that's in there. The current phrasing of “personal health information accessible by means of the electronic health record” is inconsistent with other similar provisions in the bill and should actually state “personal health information that is accessible by means of the electronic health record.”

We're just ensuring that we are using consistent language.

**The Chair (Mr. Shafiq Qadri):** Comments on government motion 5? If there are no comments on government motion 5, then we'll proceed to the vote. Those in favour of government motion 5? Those opposed? Government motion 5 carries.

We proceed now to government motion 6: Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I move that the English version of paragraph 4 of subsection 55.2(2) of the Personal Health Information Protection Act, 2004, as set

out in subsection 1(12) of schedule 1 to the bill, be amended by striking out “Conducting analysis” at the beginning and substituting “Conduct analyses”.

**The Chair (Mr. Shafiq Qadri):** Comments on government motion 6? Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** Again, Chair, this is basically a technical motion that corrects a grammatical error. We are striking out “Conducting analysis” at the beginning and substituting a plural phrase, essentially, “Conduct analyses.”

**The Chair (Mr. Shafiq Qadri):** Further comments? Madame Gélinas?

**M<sup>me</sup> France Gélinas:** Elle aurait dû lire le côté francophone. Il l'avait comme il faut.

**Le Président (M. Shafiq Qadri):** S'il vous plaît, répétez.

**M<sup>me</sup> France Gélinas:** Elle aurait dû lire le côté francophone. Il l'avait comme il faut.

**Le Président (M. Shafiq Qadri):** D'accord. Y a-t-il des réponses?

All right. We'll proceed, then, to the vote. Government motion 6: Those in favour? Those opposed? Government motion 6 carries.

We proceed now to NDP motion 7: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that paragraph 11 of section 55.3 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(13) of schedule 1 to the bill, be amended by adding “and each patient to whom the personal health information relates” after “the prescribed organization”.

**The Chair (Mr. Shafiq Qadri):** Comments on NDP motion 7?

**M<sup>me</sup> France Gélinas:** Basically, this will require that prescribed organizations not only notify the health information custodian if personal health information is lost or stolen, but also notify the patient, the resident, the person, whose health information has been lost or stolen.

**The Chair (Mr. Shafiq Qadri):** Comments on NDP motion 7? Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** We will be rejecting this motion. HIPA requires that the prescribed organization notify the IPC of privacy breaches. It already requires that health information custodians notify patients when a breach happens on their own systems. There is an advisory committee that would be asked to make recommendations to the minister. So we really don't feel that this motion is necessary.

**The Chair (Mr. Shafiq Qadri):** Mr. Hillier, then Madame Gélinas.

**Mr. Randy Hillier:** Astonishing. Astonishing—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Hillier. Madame Gélinas?

**Mr. Randy Hillier:** No, I'm not even—

**The Chair (Mr. Shafiq Qadri):** Oh, okay.

**Mr. Randy Hillier:** That's a pretty solid amendment from the NDP that ensures that not only various agencies who also have statutory responsibilities but the patient or the individual whose privacy that we're talking about ought to be informed if there's information that is lost or

disclosed. The government, by rejecting this amendment, is saying that the individual who is the subject of the breach of privacy is unimportant.

First and foremost, the person who needs to be informed is the person who has direct consequences being imposed by the loss or the breach. It's astonishing—absolutely astonishing—that a Liberal government would suggest that the individual is unimportant, and that as long as some other agency or advisory committee or some other created body is informed, that's all that they need to do. Is there another word for their position than “bloody astonishing”? I don't know it.

**The Chair (Mr. Shafiq Qadri):** Madame Gélinas?

**M<sup>me</sup> France Gélinas:** We all know that this bill will require a culture shift in our health care system. You're talking about hundreds of thousands of people who need to do a culture shift. There is snooping going on; there is inappropriate looking into patients' files going on. With electronic files, it's easier and easier.

With Rob Ford—God bless his soul—200 breaches by 200 different people who looked into his file. Yet the consequences have been miniscule so far.

If you want change, let the patients know when this happens. I guarantee you that if it happens to you, then it happens to thousands of people. They will be motivated and they will make sure that cultural change happens.

To keep the patients to the discretion of an advisory committee of the minister: Who are we kidding here? If you want this thing to succeed, the patients have to know every time there is lost or stolen information, so that people take those responsibilities seriously. Right now, you can look at—I would say—any of us who are known in our community, and chances are that our records have been looked at.

**The Chair (Mr. Shafiq Qadri):** Further comments on—

**Mr. Randy Hillier:** Mr. Chair?

**The Chair (Mr. Shafiq Qadri):** Yes.

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qadri):** Recorded vote.

We'll proceed to consideration of NDP motion number 7; a recorded vote.

### Ayes

Gélinas, Hillier, Yurek.

### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Vernile.

**The Chair (Mr. Shafiq Qadri):** I declare NDP motion number 7 to have been lost.

We proceed now to government motion number 8.

**Ms. Indira Naidoo-Harris:** I move that paragraph 14 of section 55.3 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(13) of schedule 1 to the bill, be amended by adding “On and

after the first anniversary of the day this section comes into force,” at the beginning.

**The Chair (Mr. Shafiq Qadri):** Comments?

**Ms. Indira Naidoo-Harris:** Chair, we just feel that this motion clarifies the date by which a prescribed organization must have privacy practices and procedures in place and approved by the IPC. This is all about enabling the prescribed organization to continue its operations while it is developing and finalizing practices and procedures.

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**The Chair (Mr. Shafiq Qadri):** Thank you. Any further comments? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** They all know that this is coming. Royal assent is not going to happen tomorrow morning. Then to give them one more year after all of this before they have to do anything? This is not acceptable. It has to be done now.

Electronic health records are rolling out as we speak. It needs to be regulated. It needs to be legislated. It will be a while yet before this bill comes into account, and to give everybody a year past this is not acceptable.

**The Chair (Mr. Shafiq Qadri):** Thank you. Comments on government motion 8 before the vote? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Chair, I just want to point out that the IPC strongly supports this motion.

**The Chair (Mr. Shafiq Qadri):** Thank you. We'll proceed to the vote. Those in favour of government motion 8? Those opposed? Government motion 8 carries.

We proceed now to government motion 9: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that the English version of subsection 55.5(4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be amended by striking out “to use or disclose of personal health information” at the end and substituting “to use or disclose personal health information”.

**The Chair (Mr. Shafiq Qadri):** Further comments on government motion 9? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Again, Chair, it's a technical motion that corrects a clerical error by striking out “to use or disclose of personal health information” and substituting “to use or disclose personal health information.”

**The Chair (Mr. Shafiq Qadri):** Further comments before the vote, if any? We'll proceed to the vote. Those in favour of government motion 9? Those opposed? Government motion 9 carries.

Government motion 10: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that subsection 55.5(6) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be struck out and the following substituted:

“Section 12 obligations

“(6) If a health information custodian requests that the prescribed organization transmit personal health information to the custodian by means of the electronic

health record and the prescribed organization transmits the information as requested, the custodian shall comply with the obligations referred to in subsection 12(1) with respect to the transmitted information, regardless of whether the custodian has viewed, handled or otherwise dealt with the information.”

**The Chair (Mr. Shafiq Qaadri):** Further comments on government motion 10? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** This motion just clarifies that a health information custodian does not become responsible until after information has actually been transmitted to them.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any comments? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** What happened to the other section on security, on notice of loss and on exception? Is this affected by this amendment or not?

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** No, I believe it isn't.

**The Chair (Mr. Shafiq Qaadri):** Are there any further comments? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Chair, we just feel that this makes sense because a health information custodian does not control the information before it is submitted to them.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We will proceed, then, to the vote on government motion 10. Those in favour of government motion 10? Those opposed? I declare government motion 10 to have carried.

Government motion 11: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that clause 55.5(7)(b) of the of the Personal Health Information Protection Act, 2004, as set out in subsection 1(15) of schedule 1 to the bill, be struck out and the following substituted:

“(b) if the circumstances surrounding the unauthorized collection meet the prescribed requirements, notify the commissioner of the unauthorized collection.”

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

**Ms. Indira Naidoo-Harris:** Another technical motion that makes the conditions for notifying the IPC of an unauthorized collection of personal health information—and we're making it consistent with the conditions for notifying the IPC of unauthorized use of disclosure of personal health information.

**The Chair (Mr. Shafiq Qaadri):** Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I read it in exactly the opposite direction. What we have now is a requirement to notify the commissioner, and what we will have if we pass this amendment is, if the circumstances—then we notify the commissioner. I like it the way it is written right now way better. You are changing the intent and the meaning of this section. You are not just clarifying the words; you're changing them.

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

**Ms. Indira Naidoo-Harris:** We just feel that we're making this consistent with the conditions for notifying the IPC of unauthorized use of disclosure of personal health information as set out in section 12(3).

**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek?

**Mr. Jeff Yurek:** I'm in agreement with Madame Gélinas. What conditions would be placed in front of someone to not report any breach? I've spoken to many constituents of mine in my riding, and I don't think any one of them would think, if their health information was breached in any way, that the government has a list of conditions which would prevent that from being reported to the commissioner. Can the government offer some explanation?

**The Chair (Mr. Shafiq Qaadri):** Any further comments before we vote?

Those in favour of government motion 11? Those opposed? Government motion 11 carries.

We proceed now to NDP motion 12: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that subsections 55.9(2), (3) and (4) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(19) of schedule 1 to the bill, be struck out and the following substituted:

“Practices and procedures

“(2) The minister may only collect personal health information under subsection (1) if

“(a) the Lieutenant Governor in Council has prescribed not more than one unit of the ministry to collect personal health information under subsection (1) on the minister's behalf;

“(b) the prescribed unit of the ministry has put in place practices and procedures,

“(i) to protect the privacy of the individuals whose personal health information the minister collects, and to maintain the confidentiality of the information, and

“(ii) that are approved by the commissioner; and

“(c) the personal health information is in aggregate and de-identified form.

“Link

“(3) The prescribed unit of the ministry may link the de-identified personal health information collected by the minister under subsection (1) to other de-identified personal health information under the custody and control of the minister.”

**The Chair (Mr. Shafiq Qaadri):** Comments on NDP motion 12?

**M<sup>me</sup> France Gélinas:** The way the bill is written right now, people within the Ministry of Health will have a peephole, a view to the personal health information of anybody in Ontario.

#### 1010

Right here, within the tower down the road from here, people at the Ministry of Health that have nothing to do with your circle of care, that are not there to provide care to you, have an open portal to people's personal information with their identification.

This, to me, is not acceptable. There is no reason why people at the Ministry of Health should be able to look at the personal records of any Ontarian.

What this motion does is it makes sure that the information that the ministry has access to is de-identified. They should not have people's identification and their records attached together. This is a gateway to disaster. I guarantee you that Patrick Brown's and Andrea Horwath's records will be looked at through that peephole every second day, and this is wrong. There is no reason why the Minister of Health and the Ministry of Health need to look at people's personal information.

The aggregate? Absolutely. They have a stewardship role. They need to look at the aggregate of Ontarians in many different forms—no problem with this. But personal identifiers? Never.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I do understand the member opposite's concerns. I just would like to make sure that people realize the IPC is in support of the government's approach to using information in the EHR.

We're rejecting this because we really feel this motion seeks to limit the way in which the minister and the ministry may use information from the EHR.

What this is about is really allowing governments to be able to collect information after it has been made anonymous to track data; for example, how many people in Ontario smoke, how many people suffer from diabetes, that sort of information. Governments need to be able to track this data for research and in order to move forward with legislation and programs. Being able to be apprised of what's happening when it comes to patients and the various things that they may have, the health challenges they may be dealing with, is important for governments.

Again, I would like to underscore, or emphasize, that this is information that would be made anonymous, and the IPC is in support of this government using this information in this way.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek.

**Mr. Jeff Yurek:** Just to reply, we do have a note that the privacy commissioner was unable to give us a 100% guarantee that that information would remain anonymous.

But I do have to agree with the NDP. I may even go further: I don't think the ministry should have any access to our personal health information.

You only have to refer back to that Bell has come out with a program, Let's Talk, because there is such a stigma on mental health, and we're actually getting people to start talking about mental health. If a group of people who are stigmatized are thinking now the government will have access to what they discuss with their doctor in their treatment, they're either not going to go to the doctor or they're not going to be truthful with the discussions they have with the doctor, which will probably impede their care and the care of our communities.

I totally agree with the NDP on this issue. We need to ensure that the minister does not have access to our health care information. But if the government is going to

push forward and require that, then we do have to ensure that it's de-identified.

**The Chair (Mr. Shafiq Qaadri):** Madame Gélinas.

**M<sup>me</sup> France Gélinas:** The members from the Liberals say what they want to happen, and I support this. I have no problem with the government knowing how many Ontarians smoke, how many Ontarians have COPD, how many Ontarians use cancer detection. We can learn from this. I have no problem.

But this is not what the bill does. The bill does give people within the Ministry of Health unfettered access to personal identification, to your personal file with your name, with your OHIP number, with your age. Andrea Horwath, from Hamilton, and Patrick Brown—they will have access to those records. The danger there is phenomenal.

Your answer is that you want the government to be able to do aggregate data. Yes, but put it in the legislation that they will never be allowed to have the personal identifier. I asked that only information that has been de-identified—we asked the privacy commissioner if that was going to be the case. It is the case. Nobody can guarantee right now, the way that the bill is written, that—if the ministry asks for identifying information about Ontarians, the ministry will get identifying information about Ontarians. This is wrong. You know that it is wrong.

You speak to what should happen. Well, write in the bill what should happen, because right now, there is a disconnect between what you say you want to do and what the bill is doing. The bill is giving carte blanche for people within the minister's office and in the ministry's office to look at your record, at my record, at Andrea's record and at Patrick's record.

**The Chair (Mr. Shafiq Qaadri):** All right, colleagues. It's officially 10:15, so I'm going to recess this until this afternoon, when we will reconvene at 2 p.m. Thank you.

*The committee recessed from 1015 to 1400.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We reconvene, as you know, for clause-by-clause consideration of Bill 119, An Act to amend the Personal Health Information Protection Act, 2004, to make certain related amendments and to repeal and replace the Quality of Care Information Protection Act, 2004. We've already had NDP motion 12 read by Madame Gélinas. We are now in the midst of comments.

I believe Ms. Vernile requested the floor. If she presents herself—

**Mr. Arthur Potts:** No, she's now subbed off.

**The Chair (Mr. Shafiq Qaadri):** I see.

In any case, the floor is open on NDP motion number 12. Madame Gélinas.

**M<sup>me</sup> France Gélinas:** Before we broke for the pause, the member, Ms. Naidoo-Harris, mentioned that she did not think that the minister and the ministry staff would have access to personal information. I would direct her back to clause 55.9(3), which states, "Where personal health information has been collected by the minister

under subsection (1),” it goes on to: “(a) create a record containing the minimal amount of personal health information necessary for the purpose of de-identifying the information and linking it to other information in the custody or control of the minister; and

“(b) de-identify the personal health information.”

Those right there show that in order for the minister to de-identify the information, he has access to information that has identification. Otherwise, we would not need to tell him to de-identify it before he merges it with other information.

This is not acceptable. This creates a huge opening into every single personal health record for all 13.5 million Ontarians.

This is wrong. I know you don’t want to do this; you only want the minister to deal with aggregates, and so do I. But the bill does not say that. The bill says that after the minister has the information, he will have to de-identify the personal information. In order to de-identify it—it’s because he has identification in the first place.

Nothing good will come of that. It has to be changed.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Madame Gélinas. Are there any further comments before—Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Yes, thank you, Chair. I just want to clarify and ensure that we’re talking about the same thing. It is motion 12 that we’re referring to right now, right?

**The Chair (Mr. Shafiq Qaadri):** Correct.

**Ms. Indira Naidoo-Harris:** Okay. Thank you.

I just wanted to clarify a couple of things. Basically, what we’re talking about are two units that are going to be looked over and seen over quite carefully by the IPC. Under HIPA, access to the identifiable data from the EHR would be limited to two prescribed units under the ministry and not available beyond that.

One unit would be prescribed to receive the EHR data, and its function would be to de-identify it before it is used for system analytics. What that means is that the first group is going to basically ensure that there’s no information in the way of persons’ names and identifying names and so on in the data. The second unit will be looking at the data for the purposes of detecting, monitoring and preventing fraud.

This information is really important for government. What it essentially does is it ensures that decisions that we make for the future are actually informed decisions. It’s important that governments are able to collect this data, and we need to be able to have a way to do this. I think the process that’s in place right now, which will be carefully overseen by the IPC, does that. It ensures that there’s anonymity and that the information is then readily accessible in terms of how many smokers we have in Ontario, what residents may be living with diabetes and those kinds of things—key information that we need to have access to.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Madame Naidoo-Harris. Any other comments? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** So I take it that the Liberals now agree that there will be two units within the Ministry of Health that will have access to data that have identification attached to them. One of those units’ jobs will be to look at this data with identification and de-identify it. In order to de-identify, it presumes that the identity is there. So you have this real big gaping hole that allows you to look into anybody’s record in Ontario.

The other one will be dealing with fraud.

I just want the record to note that the Liberals think it is fine for the ministry to look at individual patients’ records.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** Yes, I’ll just add to that. I find it interesting, the justification from the government side for this: that it’s important for government to have this information. I think it’s important for justice and privacy that persons’ health information is not in the hands of and readily accessible by government, even if it’s important for government to have it or want it.

**The Chair (Mr. Shafiq Qaadri):** Are there any further comments before we proceed to the vote on NDP motion 12? Seeing none, we’ll proceed to the vote. Those in favour of NDP motion 12? Those opposed? The NDP motion falls.

We now proceed to NDP motion 13: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that section 55.9 of the Personal Health Information Protection Act, 2004, as set out in subsection 1(19) of schedule 1 to the bill, be struck out.

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

**M<sup>me</sup> France Gélinas:** Basically, this is a section of the bill that gives the government the right to look into the records of each and every one of us—our most personal information. We’ll have two giant microscopes—telescopes—sitting in the Ministry of Health so that they can see each and every one of our records. This is wrong. This section needs to go.

**The Chair (Mr. Shafiq Qaadri):** Any further comments? Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** We will not be supporting this. The IPC is in support of the government’s approach to using information in the EHR. The ministry’s ability to access EHR data—the ministry’s privacy protection processes and procedures—would also be subject to the IPC’s regular and ongoing oversight and review.

**The Chair (Mr. Shafiq Qaadri):** If I might just also invite you to aim yourself at your microphone.

**Ms. Indira Naidoo-Harris:** Oh, sorry.

**The Chair (Mr. Shafiq Qaadri):** I think there’s a lot of background noise over here, so it’s hard for us to hear. But in any case, thank you for your comments.

Are there any further comments before we proceed to the vote? Mr. Hillier?

**Mr. Randy Hillier:** Again, just in complete contradiction to all our understanding and desire to protect personal and private information, this government seems absolutely bent on providing and having personal and

private information being at the disposal of anybody in the bureaucracy. You can't square that circle, that all this information will be available to the bureaucracy on the very bill whose objective is to protect private information.

The arguments coming from the government side on this are completely without foundation. They're empty; they have no merit whatsoever. Again, just because government finds it important to want to have information is not justification for having access to that information.

**The Chair (Mr. Shafiq Qaadri):** Further comments before we proceed to the vote on NDP motion 13?

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote.

### Ayes

Gélinas, Hillier, Yurek.

### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qaadri):** NDP motion 13 falls.

We are now on the PC motion labelled as 13.1. Mr. Hillier.

**Mr. Randy Hillier:** I move that subsection 1(19) of schedule 1 to the bill be struck out.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hillier. I inform you that that particular motion, PC motion 13.1, is out of order as it is exactly the same as the previously defeated motion. We now proceed—

**Mr. Randy Hillier:** I agree.

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**The Chair (Mr. Shafiq Qaadri):** I commend you on your agreement.

We now proceed to PC motion 13.2. Mr. Hillier?

**Mr. Randy Hillier:** I move that subsection 55.11(1) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out “an advisory committee” in the portion before clause (a) and substituting “a multidisciplinary advisory committee”.

**The Chair (Mr. Shafiq Qaadri):** Further comments on PC motion 13.2? Mr. Yurek.

**Mr. Jeff Yurek:** We feel it's important, in listening to the consultations that came before committee, to ensure we have a multidisciplinary advisory committee that can raise issues from various aspects of the health care sector to ensure that any changes or direction that the ministry may be headed in is hearing from all sides of the story, so we don't need to come back and repeatedly fix things when consultation is not done at the correct level.

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

**M<sup>me</sup> France Gélinas:** I will support the motion. An interdisciplinary, multidisciplinary advisory committee is

the way to go when you're dealing with health care matters.

**The Chair (Mr. Shafiq Qaadri):** Further comments? Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** The government feels that “multidisciplinary” is vague and undefined and that the committee will, by its very nature, be multidisciplinary. Members will represent, we feel, a broad spectrum of health system stakeholders who will be involved. It's important that we create a body that can be flexible and allow us to have the right people at the table.

**The Chair (Mr. Shafiq Qaadri):** Any further comments before we proceed to the vote on PC motion 13.2? Mr. Hillier.

**Mr. Randy Hillier:** We're going to have to replay some of these arguments. The government wants to be flexible, so they don't want to have a multidisciplinary advisory committee struck. They want to have that latitude and freedom.

As the member said, they're going to consult. This advisory committee will have a number of different groups that will comprise this advisory committee. But they're too fearful to actually state that in the legislation. They're saying that they're going to have multiple disciplines in the advisory committee, but we won't put it in law.

I know that when government acts, they act where they have to and how the legislation compels them to. If it doesn't say “a multidisciplinary committee,” then there is no obligation to do so. If the government members are being forthright about their arguments, then they would have no hesitation to put their arguments into law.

**The Chair (Mr. Shafiq Qaadri):** Further comments on PC motion 13.2? Seeing none, we'll proceed—

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote. We'll proceed to the recorded vote.

### Ayes

Gélinas, Hillier, Yurek.

### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qaadri):** I declare PC motion 13.2 to fall.

We now proceed to government motion 14: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that clause 55.11(1)(a) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be struck out and the following substituted:

“(a) practices and procedures that the prescribed organization must have in place to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information;”

**The Chair (Mr. Shafiq Qaadri):** Further comments on government motion 14? Ms. Naidoo-Harris, then Mr. Hillier.

**Ms. Indira Naidoo-Harris:** This is essentially a technical motion which ensures consistent phrasing between 55.11(1)(a) and 55.11(1)(c).

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** It certainly appears that the government wants to prescribe to prescribed organizations restrictions to maintain confidentiality of information, but as we've seen from the earlier arguments, they don't want to hold themselves to that account, and allow anybody in their ministry to have any confidential information whatsoever.

**The Chair (Mr. Shafiq Qaadri):** Further comments on government motion 14? Seeing none, we'll proceed to the vote. Those in favour of government motion 14? Those opposed? Government motion 14 carries.

We'll now proceed to government motion 15: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that clause 55.11(1)(c) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out "maintain confidentiality with respect to the information" at the end and substituting "maintain the confidentiality of the information".

**The Chair (Mr. Shafiq Qaadri):** Further comments on government motion 15? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** This is another technical motion which ensures that there is consistent phrasing with subsection 55.11(1)(a).

**The Chair (Mr. Shafiq Qaadri):** If there are no further comments, then we'll proceed to the vote. Those in favour of government motion 15? Those opposed? Government motion 15 carries.

We'll now proceed to government motion 16: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that clause 55.11(1)(d) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(21) of schedule 1 to the bill, be amended by striking out "give notice under subsection 12(2) and 55.5(6) and (7)" and substituting "give notice to individuals under subsections 12(2) and 55.5(7)".

**The Chair (Mr. Shafiq Qaadri):** Further comments? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** This motion just basically clarifies that the advisory committee's recommendations would be in respect of the prescribed organization's role in assisting health information custodians to comply with their obligation to give privacy breach notices to individuals.

**The Chair (Mr. Shafiq Qaadri):** We'll proceed to the vote. Those in favour of government motion 16? Those opposed? Government motion 16 carries.

PC motion labelled 16.1: Mr. Hillier.

**Mr. Randy Hillier:** I move that subsection 55.11(3) of the Personal Health Information Protection Act, 2004,

as set out in subsection 1(21) of schedule 1 to the bill, be struck out and the following substituted:

"Appointments

"(3) The minister shall appoint the members of the advisory committee in accordance with subsection (3.1) and the prescribed requirements, if any.

"Same

"(3.1) The members of the advisory committee must include:

"1. At least one individual who is a member of the College of Physicians and Surgeons of Ontario.

"2. At least one individual who is a member of the College of Nurses of Ontario.

"3. At least one individual who is a member of the Ontario Medical Association.

"4. At least one individual who is a member of the public."

**The Chair (Mr. Shafiq Qaadri):** Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** The government will not be supporting this motion. This motion attempts to require what types of individuals should sit on the advisory committee. The government feels that by quantifying this, we're limiting it. Currently, HIPA allows the minister to appoint members as the situation requires. HIPA provides the authority for committee membership to be prescribed in regulation if needed.

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For example, in the list that's been moved forward, pharmacists are left out. Also, there's the College of Nurses that's been inserted, but not the nurses' association. We feel that this motion, while attempting to broaden things, is actually limiting it. We will be rejecting this motion.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek and then Mr. Hillier.

**Mr. Jeff Yurek:** We've noted, and the OMA had noted in their dissertation, that the information-sharing framework governance committee was quite successful, and that's due in part to multidisciplinary membership. I imagine you could probably go through the entire Ministry of Health and note that they probably have the most success when, indeed, they are involving multidisciplinary groups.

I don't have the confidence that this government will have an advisory committee that contains multidisciplinary groups. Particularly, I'm pretty sure the OMA will probably be excluded, considering this government has personally taken to attacking them through the media.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** Contrary to the member's assertion, this amendment would not prevent the government from having additional people on the advisory committee; it just sets out the minimum of who will be. It certainly appears to me that the government wants to have an advisory committee of just Liberal Party donors, the way they're going about this bill, where they don't want to have any responsibility or any obligation to the public about who is providing advice.



The way the bill is written, without this amendment and without others that we've spoken about, we could just see an advisory committee of Liberal bagmen. That's not what we expect; it's not what I expect.

If the government is being honest about having broad representation on this advisory committee, put your money where your mouth is. Put it in the legislation. What groups are going to be on this advisory committee, or are you going to hide and just have friends on this advisory committee?

**The Chair (Mr. Shafiq Qadri):** Any further comments on PC motion 16.1?

**Mr. Randy Hillier:** Recorded vote.

#### Ayes

Hillier, Yurek.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qadri):** PC motion 16.1 falls.

We're now on PC motion 16.2. Mr. Hillier.

**Mr. Randy Hillier:** I move that subsection 55.12(1) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(22) of schedule 1 to the bill, be struck out and the following substituted:

“Practices and procedures review

“(1) The commissioner shall review the practices and procedures of the prescribed organization referred to in paragraph 14 of section 55.3 every three years after they are first approved to determine if the practices and procedures continue to meet the requirements of subparagraph 14 i of section 55.3 and, after the review, the commissioner may renew the approval.”

**The Chair (Mr. Shafiq Qadri):** Any further comments on this?

**Mr. Randy Hillier:** It's pretty straightforward, Chair. Let's review our practices, mandate a review, mandate when the review will happen and allow ourselves to analyze, examine and evaluate the effectiveness.

**The Chair (Mr. Shafiq Qadri):** Further comments? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I will be supporting this, simply because the language is a lot more forthright and clear. I think what they had under “Practices and procedures review”—the intention is the same; just the new wording makes it without ambiguity—a lot clearer.

**The Chair (Mr. Shafiq Qadri):** Any further comments? We'll proceed to the vote. Those in—oh, Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Just that this is a consequential amendment, based on the PCs' previous motion. It's intended to strike out the provisions that authorize the ministry to access EHR data. This motion removes all reference to the ministry's access to EHR data. If we delete 55.9, it will remove the ministry's

ability to collect EHR data for use in health planning and for fraud detection.

**The Chair (Mr. Shafiq Qadri):** Ms. Naidoo-Harris, just let me confirm: We are currently on PC motion 16.2?

**Ms. Indira Naidoo-Harris:** Yes.

**The Chair (Mr. Shafiq Qadri):** Fair enough.

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

**Mr. Randy Hillier:** I'm not sure what talking points the member had in front of her, but this amendment, as you can see, is just that the commissioner shall review the practices every three years. I think the talking point papers got mixed up.

Let's get back to 16.2. This defines when that review will happen.

**The Chair (Mr. Shafiq Qadri):** Are there any further comments? Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I stand corrected. We won't be supporting this.

**The Chair (Mr. Shafiq Qadri):** Any further comments before we proceed to the vote on PC motion 16.2?

**Mr. Randy Hillier:** I guess it doesn't make any difference if the talking points get confused. It's still going to be rejected if it's an opposition amendment, is what we can take away from that argument.

**The Chair (Mr. Shafiq Qadri):** We'll now proceed to the vote.

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qadri):** Recorded vote.

#### Ayes

Gélinas, Hillier, Yurek.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qadri):** PC motion 16.2 falls.

We'll now proceed to government motion 17. Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that subsection 55.12(2) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(22) of schedule 1 to the bill, be struck out and the following substituted:

“Notice by commissioner

“(2) The commissioner shall advise health information custodians of the results of a review conducted under subsection (1).”

**The Chair (Mr. Shafiq Qadri):** Thank you, Ms. Naidoo-Harris. Further comments from you, and then Mr. Hillier.

**Ms. Indira Naidoo-Harris:** This clause originally stated that the IPC would inform the prescribed organization and the prescribed unit that their practices and procedures are IPC-approved. In practice, the custodian would need to be informed that the practices and procedures have been approved, and the prescribed organization

and ministry unit or units would already know if they have been IPC-approved. This is just ensuring that health information custodians are advised of the information.

**The Chair (Mr. Shafiq Qadri):** Mr. Hillier?

**Mr. Randy Hillier:** I would suggest that it ensures nothing. When you read that amendment, “The commissioner shall advise health information custodians of the results of a review”—of course, it doesn’t say when they’ll be advised of that review. It doesn’t state how or when those reviews will happen. This is a meaningless, rhetorical, do-nothing amendment, much like many parts of this bill, when it comes to protecting personal information and privacy information.

Once again, “The commissioner shall advise health information custodians of the results of a review....” I’ll put it to the government: When will that review be advised? When will the commissioner advise? Is it within 30 days? Is it within 60 days? Is it within five years? What obligation will be imposed on the commissioner with this amendment?

**The Chair (Mr. Shafiq Qadri):** Any further comments on government motion 17? Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I just want to ensure that I clarify that this technical motion ensures that there is more clarity between the government, the Information and Privacy Commissioner and the health information custodians, like hospitals, all of whom are important players in ensuring that patient information is protected. I understand that this will be reviewed every three years.

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**The Chair (Mr. Shafiq Qadri):** Further comments? Seeing none, we shall proceed to the vote on government motion 17. Those in favour of government motion 17? Those opposed? Government motion 17 carries.

Government motion 18: Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that section 1 of schedule 1 to the bill be amended by adding the following subsection:

“(22.1) The act is amended by adding the following section:

“Protection from liability for health information custodian

“55.12.1 A health information custodian who, acting in good faith, provides personal health information to the prescribed organization by means of the electronic health record is not liable for damages resulting from,

“(a) any unauthorized viewing or handling of the provided information, or any unauthorized dealing with the provided information, by the prescribed organization, its employees or any other person acting on its behalf; or

“(b) any unauthorized collection of the provided information by another health information custodian.”

**The Chair (Mr. Shafiq Qadri):** Any further comments on government motion 18? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** This motion essentially just clarifies that if a health information custodian transmits personal health information to the prescribed organization, the custodian is not responsible for any unauthorized viewing, handling or dealing with the trans-

mitted information and any unauthorized collection of the transmitted information.

What this does is essentially create a clear sense of responsibility. For example, once the hospital sends the information on to the prescribed organization, that information and its privacy is the responsibility of that organization. This is something that the Ontario Hospital Association asked for. They wanted this clarification, and we agreed they should have it.

**The Chair (Mr. Shafiq Qadri):** Further comments on government motion 18? Seeing none, we’ll proceed to the vote. Those in favour of government motion 18? Those opposed? Government motion 18 carries.

We’ll now move to PC motion 18.1: Mr. Hillier.

**Mr. Randy Hillier:** I move that clause 55.13(2)(g) of the Personal Health Information Protection Act, 2004, as set out in subsection 1(23) of schedule 1 to the bill, be struck out.

**The Chair (Mr. Shafiq Qadri):** Any comments? Mr. Yurek.

**Mr. Jeff Yurek:** This amendment would remove the ability of the ministry to not only collect and use personal health information, but would stop the ministry from being able to name any part of the ministry to have access to individuals’ personal health information.

As I mentioned earlier, there is quite the concern out in the public, and among some health professionals, that the knowledge that the minister and the ministry will have access to personal information may deter people from seeking the medical help that they do need.

In particular, I will reference mental health conditions. We spend so much time having the Bell Let’s Talk campaign to have people move past the stigma. The fear is that this government would now have access to personal conversations and discussions with their medical practitioner.

**The Chair (Mr. Shafiq Qadri):** Madame Gélinas and then Madame Naidoo-Harris.

**M<sup>me</sup> France Gélinas:** The government has to realize that it doesn’t matter how you look at it: A person working for the Ministry of Health will never be part of the circle of care. The people working for the minister do not need to have personal health information with identifiers.

I don’t know how else we can tell you that, but you have an entire bill that has clause after clause set up to do just that. You will undermine any chance of this bill having any success in changing the culture of protection within the health care system when you have clause after clause that tells you that we will have a telescope in the minister’s office to look at anyone’s personal health record and find out the most intimate, personal information about you. This is what your bill does. It is wrong. You have to change your mind, and this is the opportunity to do that.

**The Chair (Mr. Shafiq Qadri):** Thank you, Madame Gélinas. Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I understand the passion that the member opposite feels about this and I respect her feelings. Once again, in order for governments to

make informed decisions, in order for us to be able to continue when it comes to research and science, it is important to have access to relevant, de-identified health data. This is a principle that's upheld in many corners of the sector in the world. This information is integral to fighting fraud and to ensuring that, as governments, we come up with programs and plans that will ensure that the quality of health in our province is meeting the levels of excellence it needs to.

HIPA ensures that Ontario maintains its position as a leader in health. HIPA provides privacy, accountability and transparency. All we're trying to do, I will tell the member opposite, is ensure that that information becomes de-identified, is not identifiable and is anonymous so that governments can plan and research can continue. I do hope that this idea is being clearly communicated.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Naidoo-Harris. Mr. Hillier, then Madame Gélinas.

**Mr. Randy Hillier:** This amendment would restrict the ability of the minister or the ministry to delegate who else gets information, by stealth—by regulation. We all know that when the minister or the ministry makes regulations, that does not come back before the House for scrutiny at any time, so to suggest that this is needed—that the ministry needs to have greater latitude without legislative oversight to allow the ministry to share information with an even greater, broader circle of people—is foolish.

The member from Nickel Belt implored the government to change their mind. I guess I should state that the people in this committee didn't make the decision in the first place, so it's hard for them to change their minds when they didn't make any determination or decision in the first place.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Gélinas?

**M<sup>me</sup> France Gélinas:** The member says all the right things, like it's important to have access to de-identified info. But that's not what the bill says. We are not here to listen to what she wishes the bill would do. We're here to rate the bill, and the bill says that there will be two units within the ministry and this gives the minister the opportunity to name more units which will have access to our personal information, with identifiers.

I know that your heart is in the right place and what you would like it to say, but it doesn't. You have to read what's in front of you—not the notes that they prepare for you, but the bill that we are talking about.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Madame Gélinas. Are there any further comments before we proceed to the vote on PC motion 18.1?

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qaadri):** Any further comments? Seeing none, I'll proceed to the recorded vote on PC motion 18.1.

## Ayes

Gélinas, Hillier, Yurek.

## Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qaadri):** PC motion 18.1 falls.

We now proceed to PC motion 18.2: Mr. Hillier.

**Mr. Randy Hillier:** I move that section 72 of the Personal Health Information Protection Act, 2004, as amended by subsection 1(26) of schedule 1 to the bill, be amended by adding the following subsection:

“Reverse onus for prescribed organization

“(9) If a prescribed organization is charged with contravening clause (1)(a) with respect to personal health information that is accessible by means of the electronic health record, as defined in subsection 55.1(1), the onus is on the prescribed organization to prove that it took reasonable care to avoid committing the offence.”

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**The Chair (Mr. Shafiq Qaadri):** Mr. Yurek?

**Mr. Jeff Yurek:** This amendment is basic. It's adding accountability to organizations in the health care system to ensure that they're doing the best of their ability to provide protection of private health information. It's accountability that we've been pushing this government on, on any aspect of legislation in the House that needs to be returned to not only the Legislature but the government of Ontario.

We're hoping they will listen and add this bit of accountability that the people of Ontario continually ask for.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on PC motion 18.2? Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** This motion essentially attempts to put a reverse onus on the prescribed organizations to prove it took reasonable care to avoid committing the offence of wilfully collecting or disclosing personal health information.

We feel this motion is unnecessary because unintentional privacy breaches, which may occur despite reasonable care taken by the health information custodian, are not offences under PHIPA. The fact that it took reasonable care to avoid committing a wilful offence would not be a viable defence to the charge.

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

**Mr. Randy Hillier:** I wish they'd used that argument with all of their other legislation where they brought out strict liability for everybody else and a requirement of due diligence. I find it odd that it is now not fashionable, or not vogue, for the government to have this onus placed on prescribed organizations.

Listen: That section deals with a wilful breach—not an unintentional or accidental breach, but a wilful breach. There clearly should be an onus placed on that organization to demonstrate that they took all reasonable precautions, and bear out that argument.

**The Chair (Mr. Shafiq Qaadri):** Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I wish we would take a little bit of time to look at this bill through the eyes of the people

that will be affected, through the eyes of the people whose privacy will have been breached. If your privacy has been breached by a health care worker in the hospital, or a secretary in the hospital, sure, I hope the secretary will lose her job. But what we're trying to put in there is that the secretary, who has no means to defend herself—she will probably be hung out to dry. If she breached confidentiality, I have no problem with that. But the hospital that allowed that to happen doesn't have to prove that—even if it happens over and over, there will be no onus put on them to prove that they have taken reasonable precautions.

This is important enough that even the big players should be held accountable, and this is what this is trying to do. Not just the low-hanging fruits who looked, but the employer that she or he worked for, also has to be held accountable and show that they are taking this seriously enough so that they can show that reasonable care was taken to avoid it. Don't just hang the person that has a lower defence; hold the big players accountable also.

**The Chair (Mr. Shafiq Qadri):** Further comments? Mr. Hillier.

**Mr. Randy Hillier:** I guess the argument if this happens, according to the government, will be that the argument for the breach from a prescribed organization will be, "Well, we're still waiting to hear the advice back from the commissioner," who we didn't compel to give us any advice in the first place and to look over our procedures that we talked about in the previous amendment.

You can start to see just how many holes this government is prepared to create and how many gaps and problems they're willing to accept. As long as it appears that they've done something to satisfy the requirements of the courts, that's enough. Whether it works in practice is irrelevant and immaterial, from hearing the arguments from the government side today.

**The Chair (Mr. Shafiq Qadri):** Any further comments? Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Just once again, I wanted to point out that unintentional privacy breaches are not considered offences under PHIPA, and I think we're talking about unintentional privacy breaches.

**The Chair (Mr. Shafiq Qadri):** Any further comments on PC motion 18.2?

**Mr. Randy Hillier:** Recorded vote, please.

**The Chair (Mr. Shafiq Qadri):** Recorded vote.

### Ayes

Gélinas, Hillier, Yurek.

### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qadri):** PC motion 18.2 falls.

That is the consideration of all the various motions with reference to that section of schedule 1. Shall section 1 of schedule 1, as amended, carry? Carried.

We have, to date, not received any material, motions or amendments for schedule 1, section 2. Shall it carry? Carried.

Similarly, for schedule 1, section 3, shall it carry? Carried.

We have received an NDP motion, 18.3, which is with reference to schedule 1, section 4. Are all the members in possession of NDP motion 18.3? It should have been handed out separately from the main package. Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that schedule 1 to the bill be amended by adding the following section:

"Social Work and Social Service Work Act, 1998

"4.1 The Social Work and Social Service Work Act, 1998 is amended by adding the following section:

"Electronic health record

"38.1(1) The minister may make regulations,

"(a) requiring the college to collect from its members information relating to its members that is specified in those regulations and that is, in the minister's opinion, necessary for the purpose of developing or maintaining the electronic health record under part V.1 of the Personal Health Information Protection Act, 2004, including ensuring that members are accurately identified for purposes of the electronic health record;

"(b) requiring the college to provide the information to the prescribed organization in the form, manner and time frame specified by the prescribed organization;

"(c) respecting the notice mentioned in subsection (4).

"Members to provide information

"(2) Where the minister has made a regulation under subsection (1), and the college has requested information from a member in compliance with the regulation, the member shall comply with the college's request.

"Use and disclosure by prescribed organization

"(3) Despite a regulation made under subsection (1), the prescribed organization,

"(a) may only collect, use or disclose information under this section for the purpose provided for in subsection (1);

"(b) shall not use or disclose personal information collected under this section if other information will serve the purpose; and

"(c) shall not use or disclose more personal information collected under this section than is necessary for the purpose.

"Notice required by s. 39(2) of FIPPA

"(4) Where the minister has made a regulation under subsection (1), and the college is required to collect personal information from its members, the notice required by subsection 39(2) of the Freedom of Information and Protection of Privacy Act is given by,

"(a) a public notice posted on the prescribed organization's website; or

"(b) any other public method that may be prescribed in regulations made by the minister under subsection (1).

"Same

“(5) If the prescribed organization publishes a notice referred to under subsection (4), the prescribed organization shall advise the college of the notice and the college shall also publish a notice about the collection on the college’s website within 20 days.

“Definitions

“(6) In this section,

““information” includes personal information, but does not include personal health information; (“renseignements”)

““personal health information” has the same meaning as in section 4 of the Personal Health Information Protection Act, 2004; (“renseignements personnels sur la santé”)

““prescribed organization” has the same meaning as in section 2 of the Personal Health Information Protection Act, 2004. (“organisation prescrite”)

Basically, what this does is that if you look on page 23 of the bill, section 4, the Regulated Health Professions Act is amended by adding the following section. Social workers are not covered by the Regulated Health Professions Act—

**Le Président (M. Shafiq Qadri):** Madame Gélinas, excusez-moi.

1450

**M<sup>me</sup> France Gélinas:** Sorry.

**Le Président (M. Shafiq Qadri):** Vous avez fini?

**M<sup>me</sup> France Gélinas:** I’m done.

**Le Président (M. Shafiq Qadri):** Oui, d’accord. Malheureusement, je dois vous informer que votre motion est irrecevable. Nous avons legislative counsel to weigh in on it, if you need further confirmation.

**M<sup>me</sup> France Gélinas:** Can I ask for unanimous consent that we consider it?

**The Chair (Mr. Shafiq Qadri):** You may certainly ask for unanimous consent.

**Mr. Randy Hillier:** May I ask for a translation of that first?

**The Chair (Mr. Shafiq Qadri):** Oh, yes. Thank you.

Madame Gélinas has just presented NDP motion 18.3. This is out of order. I have offered for legislative counsel to weigh in on the reasons for that, should further explanation be required. I think we probably need to deal with that issue first before anything else happens.

Do you need an explanation as to why the motion is out of order, Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I think I already know. It’s because it’s modifying the legislation that has to do with social workers, and we’re talking about the Regulated Health Professions Act.

I’m asking for unanimous consent that we can modify this other act so that social workers are included, because 9,000 of them work in our health care system, and right now, we’ve forgotten them.

**The Chair (Mr. Shafiq Qadri):** Thank you. Do I have unanimous consent to open the referred-to act so that it will enable section 18.3 to be in order?

**Mr. Bob Delaney:** Point of order.

**The Chair (Mr. Shafiq Qadri):** Yes, Mr. Delaney?

**Mr. Bob Delaney:** Chair, even with unanimous consent, would the Clerk confirm whether or not the committee would have that power, in which case, if it doesn’t, the request for unanimous consent would also be out of order?

**The Chair (Mr. Shafiq Qadri):** I fully appreciate your plausibility, and I’m not adequately caffeinated to rule, but I will invite those who are. Thank you.

*Interjections.*

**The Chair (Mr. Shafiq Qadri):** Mr. Delaney, although your point is very well taken and did require a mutual consultation, apparently it is in fact in order to ask for unanimous consent to enable this motion to also be in order. But it will require unanimous consent of the committee.

Therefore, I ask again: Do I have unanimous consent to open this particular—no. I heard dissent. Therefore, I cannot grant unanimous consent. Therefore, the motion is now out of order.

We will now proceed to simply ask: Shall section 4, schedule 1, carry? Carried.

Similarly, we have not received to date any motions with regard to schedule 1, section 5. Shall section 5 of schedule 1 carry? Carried.

Shall schedule 1, as amended, carry? Carried.

We now proceed to consideration of schedule 2, section 1. To date, I have not received any motions with reference to it. Shall section 1, schedule 2, carry? Carried.

We have received two motions with reference to schedule 2, section 2. We now proceed to NDP motion 19. Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that paragraph 3 of subsection 2(3) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by striking out “critical” before “incident” in the portion before subparagraph i.

**The Chair (Mr. Shafiq Qadri):** Are there any further comments on NDP motion 19? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** This request comes from the Information and Privacy Commissioner. He recommended removing the word “critical” in this section to ensure that the definition remains consistent with the current definition in section 1 of QCIPA.

The Information and Privacy Commissioner states:

“The proposed legislation appears, in some respects, to be less open and transparent than the current QCIPA, the statute it will replace, especially in relation to incidents that do not fit within the definition of a ‘critical incident.’ By narrowing the types of information that are excluded from the definition of ‘quality of care information,’ it is my view that the enactment of the proposed legislation may result in the disclosure of less information to individuals and their authorized representatives and therefore less openness and transparency than is currently the case under QCIPA....

“I therefore recommend that the proposed legislation be amended to ensure that individuals and their authorized representatives continue to have a right of access to

facts of what occurred in respect of all incidents that are reviewed under the proposed legislation, rather than just facts relating to critical incidents. This is consistent with the current provisions of QCIPA.”

The wording of the motion came from the Information and Privacy Commissioner.

**The Chair (Mr. Shafiq Qadri):** Further comments?

**Ms. Indira Naidoo-Harris:** I just want to tell the member opposite that the government does share the goal of this motion. However, to make sure information relating to incidents is not shielded from patients’ families and is captured in a more comprehensive way, we are proposing another government motion, number 20. We just feel that that would implement it more effectively—to ensure patient access to information through motion 20.

**The Chair (Mr. Shafiq Qadri):** Any further comments? We’ll proceed, then, to the vote.

Those in favour of NDP motion 19? Those opposed to NDP motion 19? NDP motion 19 falls.

We now proceed to government motion 20. Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that subsection 2(3) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding the following paragraph:

“3.1 Information that consists of facts contained in a record of an incident involving the provision of health care to a patient.”

**The Chair (Mr. Shafiq Qadri):** Comments?

**Ms. Indira Naidoo-Harris:** Essentially, Chair, we feel that this motion will help to increase transparency by retaining a provision from the original QCIPA. It will make sure that patients and their families can access the facts about all health care incidents that can be reviewed under QCIPA, in addition to facts relating specifically to critical incidents.

It also maintains what we think is a crucial link between QCIPA and the Public Hospitals Act regulation 965 by ensuring that the full requirements regarding critical incident disclosures to patients are also represented in QCIPA.

We just feel that this motion is more detailed and increases transparency.

**The Chair (Mr. Shafiq Qadri):** Any further comments on government motion 20? Seeing none, we’ll proceed to the vote.

Those in favour of government motion 20? Those opposed? Government motion 20 carries.

Shall schedule 2, section 2, as amended, carry? Carried.

To date, we have received no amendments or motions for schedule 2, section 3. Shall it carry? Carried.

We shall proceed to the next section—schedule 2, section 4—for which we have received government motion 21. Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I move that clauses 4(1)(a) and (b) of the Quality of Care Information

Protection Act, 2015, as set out in schedule 2 to the bill, be struck out and the following substituted:

“(a) offer to interview a patient or the authorized representative of the patient or the patient’s estate in any review of an incident or circumstances involving the provision of health care to the patient;

“(b) include a person responsible for patient relations or providing patient perspectives to the facility on a committee or other similar body conducting any review of a critical incident; or”

**The Chair (Mr. Shafiq Qadri):** Comments? Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Chair, we just feel that this motion actually clarifies that a patient does not have to agree to be interviewed about a critical incident if they choose not to. It gives them the right to say no and provides flexibility for health facilities involved in designating the right person to represent the patient perspective on a committee reviewing a critical incident.

**1500**

The feeling is that this motion would make a minor technical change that ensures that the language is consistent in provisions that make the critical incident review process more patient-centred and more patient-sensitive, I would say.

**The Chair (Mr. Shafiq Qadri):** Any further comments on government motion 21? Seeing none, we will proceed to the vote.

Those in favour of government motion 21? Those opposed? Government motion 21 carries.

Shall schedule 2, section 4, as amended, carry? Carried.

We have received no amendments or motions to date for the next four sections, all of schedule 2. May I take it that it is the will of the committee to consider them all en bloc, which is sections 5, 6, 7 and 8? Agreed? Agreed.

Shall, of schedule 2, sections 5, 6, 7 and 8 carry? Carried.

We now proceed to schedule 2, section 9, and although we have three amendments submitted, motions labelled 22, 23 and 23.1, we will actually consider motion 23 before 22, for highly abstruse reasons. Motion 23 is the NDP’s: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that section 9 of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 of the bill, be amended by adding the following subsection:

“Exception, disclosure to the commissioner

“(4.1) Despite subsection (1), a person may disclose quality of care information to the commissioner for the purpose of enabling the commissioner to carry out the commissioner’s powers and duties under the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act, 2004.”

**The Chair (Mr. Shafiq Qadri):** Any further comments on NDP motion 23?

**Ms. Indira Naidoo-Harris:** We feel this motion would undermine the trust and confidentiality of QCIPA, resulting in health care staff being hesitant to openly share information with a quality of care committee. We feel that the act actually ensures that patients are provided with facts about incidents. The ministry agrees with the need to ensure patients and their families can get help from an independent body when they are dissatisfied with a critical incident review, including those reviewed under QCIPA, so we really feel that this motion would undermine the trust when it comes to the confidentiality process of QCIPA.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on NDP motion 23? Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I'll let him go first.

**The Chair (Mr. Shafiq Qaadri):** Good. Mr. Hillier?

**Mr. Randy Hillier:** We heard in the committee, specifically on this one, a powerful delegation. I believe the gentleman's name was Joe Colangelo. He brought in somebody with him to the committee hearing who had been recently involved in the courts. The argument that was put forth, I think with substantial merit, was that this section needed amendments substantially because the way it was worded would prevent disclosure of necessary information in the courts for patients or patients' estates to know what actually had happened.

The arguments were also about how this part of the bill was going against and opposing the direction of any instructions of our courts, and our belief and recognition of just what is a just society. The courts are going in one direction and it appears the government is going in a direction that is 180 degrees away. When the member says this undermines the trust, I think what it undermines, if it's not adopted, is justice, not trust. Anything that is discussed in this fashion ought to be available to the courts, in the case that a case ends up in front of the courts. We can't hamstring and restrict our courts from finding facts. That's the purpose of the courts. To legislatively put blinders on our courts is unacceptable.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further comments? Madame Gélinas?

**M<sup>me</sup> France Gélinas:** You have to look at it through the view of the patient and their family, which is, who wants to have access to this information? What the Information and Privacy Commissioner is asking for is for his office—not the whole family; for his office—to have access to the quality-of-care information to determine whether it is properly excluded from access under the Ontario access and privacy law.

Right now, you are leaving in the people who have everything to gain in keeping information away from the patients. Something has gone wrong. They've held one of those meetings; they held it under quality-of-care information. It would be very easy to be tempted to hide as much of your mistakes as possible. That's fine if it falls within the parameters that we have put there.

All we're asking is for somebody to have access—that's the Information and Privacy Commissioner—to make sure that there isn't any information that is being

kept, under the quality of care information, away from patients that really should have been made public.

Right now, you put the people who have made the mistake to start out with, and who don't want anybody do know that they've made a mistake, in charge of deciding what information will be available and won't be available. All we're asking for is that all of that information won't be made available. We only ask for the Information and Privacy Commissioner to be able to have a look to make sure that the right amount of information is being withdrawn, and that the right amount of information—and the right information—is also being shared. It's called oversight.

Remember municipalities? They used to go in camera. Then we brought in oversight and realized that they often went in camera because they did not want people to hear what they had to say, but they had no rights. Those are human beings who have made those mistakes.

Human beings behave in the same way. It doesn't matter if you're a surgeon or an MPP or anybody else. We don't want people to know when we make a mistake. We have to give this process—that shields an awful lot of information forever—oversight so that there are no mistakes.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Ms. Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** I just want to say that I do understand MPP Gélinas's concerns. I just would remind MPP Gélinas that patients who have concerns about how a health care provider has reviewed a critical incident have the opportunity to take their complaints forward to the patient ombudsman. The patient ombudsman may be able to facilitate a resolution to the complaint, so there is a process in place for patients to file complaints when they have a question about a critical incident investigation.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier?

**Mr. Randy Hillier:** Subsections 9 and 10 are placing unnecessary barriers, and barriers that will create injustice.

Further to the member from Nickel Belt's comments, the people who have made an error or made a mistake, and whatever the consequence of that error or mistake has been, whether it's a fatality or whether it's a serious injury or whatnot—it can't be allowed just to those people to determine what information is going to be brought out and allowed to the person who has been affected.

**1510**

First, foremost, and without a doubt the only priority: This legislation ought to be protecting the individual. That's what it's meant to do: protect the individual, not obstruct and prevent individuals from finding out what actually happened to them.

Those two sections really are inconsistent with, and contrary to, any sense of justice and any recognition of the importance of the patient and the importance of the individual. That's what legislation is made for: to protect people, not to allow cover-ups or to obscure information from being brought forward.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hillier. Any further comments? Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** Yes, Chair—just a reminder that the patient ombudsman will be able to facilitate a resolution to the complaint. We feel that there is a process in place to deal with these issues.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Madame Gélinas.

**M<sup>me</sup> France Gélinas:** The patient ombudsman won't have access to the quality of care information that is shared. What we're asking for is if we want the public to have trust in this, that good things would come from having those meetings shielded, you need to have independent oversight—this is crucial—so that we can uphold the integrity of the quality of care information. Otherwise, the entire premise of the quality of care information will be seen in the same way it is seen right now. This is a way for health professionals who have made a mistake to shield their mistakes from the people who live with the sometimes drastic consequences of their mistake. That's what we have now.

If you don't give it oversight, we will be in the exact same boat as we are now, where people will use this to shield as much information as possible because they know they have made a mistake. You will have hundreds of families who cannot gain closure because they don't know what happened to their loved one, because the information is kept secret from everyone, including the patient ombudsman. Give it integrity.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on NDP motion 23? Mr. Hillier.

**Mr. Randy Hillier:** Listen, somebody over there has got to be doing some reading somewhere or listening to some of the delegations that came to this committee. I can't believe that there is an absence of thought and a complete silence of interaction here on this.

Do the government members not think that it's important that patients—individuals—are informed honestly and forthrightly of what may have happened to them while they were seeking care? How can you devise a piece of legislation that, with subsections 9 and 10, purposely excludes individuals from finding honest, factual information?

To suggest that a recourse and remedy is to go and apply for permission from somebody else who is also just as obscured from the information is completely ridiculous—completely ridiculous. The argument has no foundation.

Stand up, protect the individuals who voted for you, protect their families and ensure not that they have an avenue to seek information, but that they have a bloody legislative right to find out the information.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further comments on NDP motion 23? Mr. Potts.

**Mr. Arthur Potts:** We have listened very carefully and we've seen the transcripts and what people came to talk to us about. We have a lot more faith, I believe, in the role that the ombudsman would play than what I'm hearing from the other side. The right ombudsman, the

right circumstances—the sensitivities are there. People will be protected; the information will be fine.

I have a difference of opinion about how these sections will work, compared to what the opposition members are saying. We're quite content to go forward with the way that it's drafted.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** It would be nice if your difference of opinion was based on some fact, Mr. Potts. You may have confidence, but this committee is not studying the confidence of the Ombudsman. This committee is studying the statute that is in front of us. That's what we're doing, not having a discussion about how much we like an Ombudsman or how much faith or confidence we may have in him. We're talking about the law; you're making the law. You're purposely preventing people from finding out what happened to them.

You can smirk. I hope nothing ever happens to any of your loved ones, Mr. Potts, where they need to find information about what happened to them in case of an error. I'd rather you not have to seek permission from somebody to get information, but that you have a legislative right to find out what happened to your loved one.

**The Chair (Mr. Shafiq Qaadri):** Madame Gélinas.

**M<sup>me</sup> France Gélinas:** Basically, something has gone wrong. You ask the hospital, "What happened to my loved one?" The hospital answers back to you: "We can't tell you this, because it is protected under the quality-of-care information." So you know that something has happened. You live with the proof that something has happened. You ask what happened, and this is what you're told.

We're not saying that this information will be shared with the patient. We're just saying that there will be an independent determination as to whether the hospital interpreted the QCIPA properly or not, because we know that the human reaction will be to hide as much of your mistake as possible.

In order to have confidence in the process, the patient who is told, "We can't tell you, because it's part of quality-of-care information" will be able to go to the Information and Privacy Commissioner, who will say, "Yes, they are within their rights," or, "No, they are not." All that this will do is give them peace of mind that somebody who is on their side has reviewed and made sure that the hospital did not hide things that they should have made public. That's all.

**The Chair (Mr. Shafiq Qaadri):** Ms. Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I just wanted to emphasize again that this whole act is here to ensure that patients are provided with the facts about incidents. Basically, what we are trying to do with this act is ensure that information is shared with patients when it comes to incidents.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** We can agree on that, that it is ostensibly what the purpose of this act is. What we're disagreeing with is the ability of this act to actually deliver it. It is clear that this act does not deliver on the



objective, but will actually make it more difficult in many instances, and impossible in many instances, for the disclosure of information to the individual who has been affected.

Chair, I'm going to be asking for recorded votes on subsection 9 and 10 amendments. I want to see, and have it recorded for all time, just who is voting to exclude and prevent patients from getting access to information when something has gone wrong.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Hillier. A recorded vote request is per vote, but we'll be happy to entertain that.

Are there any further comments on NDP motion 23 before we proceed to the recorded vote? I see none.

#### Ayes

Gélinas, Hillier, Yurek.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qadri):** NDP motion 23 falls.

We'll proceed now to motion 22, also of the NDP: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that subsection 9(2) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding the following definition:

“‘Commissioner’ means the Information and Privacy Commissioner appointed under the Freedom of Information and Protection of Privacy Act;”

1520

**The Chair (Mr. Shafiq Qadri):** Further comments? If not, we'll proceed to the vote.

**Mr. Randy Hillier:** Recorded vote.

**The Chair (Mr. Shafiq Qadri):** Recorded vote.

#### Ayes

Gélinas, Hillier, Yurek.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qadri):** NDP motion 22 falls.

We'll now proceed to PC motion 23.1: Mr. Hillier.

**Mr. Randy Hillier:** I move that schedule 2 to the bill be amended by adding the following section:

“Mandatory disclosure to Information and Privacy Commissioner

“9.1(1) In this section,

“‘Commissioner’ means the Information and Privacy Commissioner.

“Same

“(2) Despite the Personal Health Information Protection Act, 2004 and subsection 9(1) of this act, a quality of care committee shall disclose quality of care information to the commissioner.

“Commissioner’s review

“(3) The commissioner may, on his or her own initiative, conduct a review of any matter if the commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this act or the regulations and that the subject matter of the review relates to the contravention.

“Notice

“(4) Upon deciding to conduct a review under this section, the commissioner shall give notice of the decision to every person whose activities are being reviewed.

“Application of other act

“(5) Sections 59 to 65 of the Personal Health Information Protection Act, 2004 apply to the review with necessary modifications as if the review were a review under section 57 or 58 of that act.”

**The Chair (Mr. Shafiq Qadri):** Further comments on PC motion 23.1? Mr. Yurek.

**Mr. Jeff Yurek:** Chair, this motion is basically adding some oversight and giving the commissioner some leeway in order to ensure that when they can do a review of any matter before them or decide to act on a possible contravention—that a review can take place, and those who have been involved are notified of what occurred during his decision related to the activities.

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

**Ms. Indira Naidoo-Harris:** The government side feels that this would undermine the trust and the confidentiality of QCIPA and result in health care staff being hesitant about openly sharing information with the quality-of-care committee.

More importantly, we feel that this motion would actually require disclosure without parameters about when disclosure would be required, which is highly problematic, we think, when you're dealing with sensitive information.

**The Chair (Mr. Shafiq Qadri):** Madame Gélinas?

**M<sup>me</sup> France Gélinas:** I agree with PC motion 23.1, that we give the Information and Privacy Commissioner the opportunity to do an investigation. There are multiple reasons why people are reluctant to put in a complaint against a hospital or care providers.

I come from northern Ontario. A hospital or care providers are often the only show in town. People are really, really reluctant to put in a complaint against their hospital or against their care provider because they feel that human nature will play a role in the quality of care they will receive the next time they need care. If you give them the opportunity to go directly to the Information and Privacy Commissioner and give the privacy commissioner the authority to conduct a review on his or her own initiative, it protects patients, which is what we're there to do.

**The Chair (Mr. Shafiq Qaadri):** Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** We just feel that this motion would mean that the confidential quality-of-care information, which was provided by staff on the impression that it would be protected, would be potentially releasable through the freedom of information and protection act processes. That's our concern with this.

In essence, it opens the possibility of disclosure without parameters, and we feel that patients should be protected against this.

**The Chair (Mr. Shafiq Qaadri):** Madame G linas?

**M<sup>me</sup> France G linas:** Everybody has noticed by now that we use "commissioner" without ever defining that we mean the privacy commissioner.

It's kind of a long list of "oopses" in that bill. We forget the social workers. We also forget that there is more than one commissioner. I'm not sure the Environmental Commissioner is that interested in QCIPA, but we could ask.

So you'll have to define that at some point. If you don't do this now, your chances are getting slimmer and slimmer all the time.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** I guess I'm to understand that although the member for Beaches-East York has lots of confidence in the ombudsman, none of the government members have any confidence in the privacy commissioner—that this patient ombudsman is a secure avenue, but heaven forbid that we should have any confidence in our Information and Privacy Commissioner. Listen, let's get with the program here, and let's get with reality. The Information and Privacy Commissioner is an officer of Parliament.

The amendment is pretty clear: "The commissioner may, on his or her own initiative, conduct a review of any matter if the commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this act...." They would need to have reasonable grounds first—demonstrable evidence, not just hearsay. But what this government is saying is, even with some level of demonstrable evidence and reasonable grounds, we can't trust the privacy and information commissioner with this disclosure of information.

Absolute nonsense. But that's what we've been seeing with these amendments in subsections 9 and 10. They are purposeful and wilful obstruction—purposeful, to frustrate people from gaining access to their own information about what may have happened to them.

There are no words to describe the disdain that this government is showing for individuals in their ability to find information about what may have happened to them.

**The Chair (Mr. Shafiq Qaadri):** Are there any further comments on PC motion 23.1? If not, recorded vote. We'll now proceed to the vote on PC motion 23.1.

**Ayes**

G linas, Hillier, Yurek.

**Nays**

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qaadri):** PC motion 23.1 falls.

Shall section 9 of schedule 2 carry?

**Mr. Randy Hillier:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote. That's fine. Shall section 9 of schedule 2 carry? Recorded vote.

**Mr. Bob Delaney:** Excuse me. Could you repeat that, please?

**The Chair (Mr. Shafiq Qaadri):** We have considered the three motions for amendments that were received. We are now considering section 9, schedule 2, to carry. We have been asked for a recorded vote for the full section, which is what I am now asking for.

**Ms. Indira Naidoo-Harris:** Schedule 2, section 9: That's all you are referring to?

**The Chair (Mr. Shafiq Qaadri):** Correct.

Recorded vote, you're asking for? Fine. A recorded vote.

Shall section 9 of schedule 2, having defeated all the amendment motions, carry? Carried.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** I'm sorry. It's a recorded vote.

**Ayes**

Berardinetti, Delaney, Martins, Naidoo-Harris.

**Nays**

G linas, Hillier, Yurek.

**The Chair (Mr. Shafiq Qaadri):** Section 9, schedule 2, carries.

To date, we have not received any amendment motions for schedule 2, section 10. Shall it carry?

**Mr. Randy Hillier:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote on that as well.

Shall section 10 of schedule 2 carry?

**Ayes**

Berardinetti, Delaney, Martins, Naidoo-Harris.

**Nays**

G linas, Hillier, Yurek.

**The Chair (Mr. Shafiq Qaadri):** Carried.

Similarly, we have not received any motions or amendments for section 11 of schedule 2. I presume it is a recorded vote. Mr. Hillier, recorded vote or no?

**Mr. Randy Hillier:** On which one?

**The Chair (Mr. Shafiq Qaadri):** On what we're considering right now, which is section 11 of schedule 2.

**Mr. Randy Hillier:** Pass.

**The Chair (Mr. Shafiq Qaadri):** Fine. Not a recorded vote. Shall this section carry? Carried.

We have received an amendment for the next item, PC motion 23.2, which is section 12, schedule 2. The floor is yours, Mr. Hillier.

**Mr. Randy Hillier:** Can I just ask for a brief five-minute recess?

**The Chair (Mr. Shafiq Qaadri):** A five-minute recess: Agreed? Agreed.

*The committee recessed from 1531 to 1536.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We reconvene. As you know, we're considering PC motion 23.2. The floor is now open. Mr. Hillier?

**Mr. Randy Hillier:** Chair, the official opposition would like to withdraw amendments 23.2 and 23.3.

**The Chair (Mr. Shafiq Qaadri):** It's 23.2 and 23.3, Mr. Hillier, correct?

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Shafiq Qaadri):** All right. Those are officially withdrawn: 23.2 and 23.3.

Shall section 12 of schedule 2 carry? Carried.

Shall section 13, schedule 2, carry? Carried.

Shall section 14, schedule 2, carry? Carried.

We're now onto section 15, schedule 2, NDP motion 24: Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I move that clause 15(2)(b) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by adding "consistent with the purpose of this act and in the public interest" at the beginning.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any comments on NDP motion 24? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** Basically, this is to ensure that everything that you've said you wanted to do has to be in the bill so that it will guide us when none of us are around: to ensure that the minister's regulations regarding "restricting or prohibiting the use of quality-of-care committees for the purpose of reviewing critical incidents" shall be "consistent with the purpose of this act and in the public interest."

It is very easy to forget who we're doing this for. We're doing this for the patients because the quality of care meetings that are taking place right now have not been respectful to the people who have suffered incidents. This bill is there for things to change for the better, for patients to gain access and to gain closure. Let's put this in the bill so that it guides all other work that we will do down the road.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Further comments on NDP motion 24? Madame Naidoo-Harris?

**Ms. Indira Naidoo-Harris:** We just feel that this motion really doesn't add much benefit to the act in the sense that all provisions under the act already have to be read and implemented in accordance with the broader goals and purposes of the act. So that's already there and it's already clear, making this amendment kind of unclear

and redundant. We really don't feel that this motion adds any real benefit to the act since the act already clarifies that all provisions must be read and implemented in accordance with the broader goals and purpose of the act.

**The Chair (Mr. Shafiq Qaadri):** Further comments on NDP motion 24? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 24? Those opposed? NDP motion 24 falls.

Shall section 15 of schedule 2 carry? Carried.

We now move to, I believe, the final amendment of the day, NDP motion 25.

**M<sup>me</sup> France Gélinas:** I move that subsection 16(1) of the Quality of Care Information Protection Act, 2015, as set out in schedule 2 to the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Public consultation before making regulations

"(1) The Lieutenant Governor in Council or minister shall not make any regulation under section 15 unless," and then the rest carries.

**The Chair (Mr. Shafiq Qaadri):** Any comments on NDP motion 25? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** Unfortunately, we have seen regulations being made by cabinet or the minister that did not have a chance for public notice and did not have a chance for the public to be consulted. What this does is that basically we are requiring that all regulations made by cabinet or the minister be made only after notice has been published for regulatory proposals on the government website and public comments have been accepted. If you're doing this so that people can get closure and so that we can help our health care system and help the people within our health care system, then let's make sure that when you start to do regulations, each and every one of them has notice, is published and people have an opportunity to be heard.

**The Chair (Mr. Shafiq Qaadri):** Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** We just feel that this motion's intent is actually already captured. There's already a government policy requirement to post both the minister's and the Lieutenant Governor in Council's regulations online for a 45-day public consultation period. There is a public consultation period of 45 days, so we really don't see any difference for public input between the LGIC and the ministry's regulations, and we feel that this motion's intent is actually already captured and not needed.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** Yes, I'll just say a comment: There's a difference between policy and statutory obligations. It is government policy to put regulations up for discussion, but it is not an obligation. With some acts, it is.

I'll just take the members of this committee back a few years ago to the G20 riots in Toronto and the change in regulations to the Public Safety Act at the time. They were not published; they were gazetted only. There was no opportunity for anybody to be informed or to have any influence in the regulation. Of course, afterwards, we saw

what happened when there was a poorly crafted regulation without public input or influence: Thousands of people were needlessly rounded up, and the Ombudsman had a scathing indictment of the government's handling of that regulation.

Contrary to the member's view that this amendment is redundant, it is absolutely not redundant. It is imperative that democratic governments actually act like democratic governments and that they encourage, permit and allow people to have knowledge of the laws, knowledge of the regulations and to provide input and be able to influence those regulations.

If the member is suggesting that for the public to provide input and to be knowledgeable is redundant and unimportant, just say so, because that's what your actions are clearly indicating.

I know the member wasn't here as a member during that G20 fiasco, but from what I understand she was employed with the Liberal Party, so that ought not to be forgotten. A number of the other members were here for the Ombudsman report on that.

There is a difference between a policy—a policy is not an obligation. Statutory obligation is what this amendment does, and we're fully supportive of it on the opposition side.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hillier.

Any further—Madame Naidoo-Harris.

**Ms. Indira Naidoo-Harris:** I just want to say that the government understands the members opposite's feeling that it's important to ensure sufficient time for public consultation. We certainly agree with that. We just feel that this is already captured. There is already a government policy requirement to post both the minister's and the LGIC's regulations online for 45 days, so there is sufficient time.

**The Chair (Mr. Shafiq Qaadri):** Any further comments? Madame Gélinas, then Mr. Hillier.

**M<sup>me</sup> France Gélinas:** I am convinced that the member can read, but I'm not convinced that she can listen.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier.

**Mr. Randy Hillier:** I find this absolutely amazing. Here we are, creating law, and all we hear from the government side is, "Well, we feel this and we feel that." We're creating legislation. This isn't about feelings; this about the law. Somebody is not going to go in front of a court and say, "I feel the law should be like this." It's what is the law. The law deals with facts, not feelings. We're creating facts, not legislating feelings.

Once again, contrary to the member's assertion, the way the act is written right at the moment, there is no requirement for the government of the day—this day or someday in the future—to have public consultations, to have public notifications or to encourage and permit

people to be involved in their democracy; this is not just the Liberal Party's democracy. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Any further comments before we proceed to the vote on NDP motion 25?

**M<sup>me</sup> France Gélinas:** Recorded.

#### Ayes

Gélinas, Hillier, Yurek.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris.

**The Chair (Mr. Shafiq Qaadri):** I declare NDP motion 25 to fall.

Shall section 16, schedule 2, carry? Carried.

To date, we have received no amendments for schedule 2, sections 17, 18 and 19. May I consider them en bloc? Shall they carry? Carried.

Shall schedule 2, as amended, carry? Carried.

Again, we have not amended or added/subtracted to sections 1, 2 or 3. May I consider them en bloc? Shall sections 1, 2 and 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 119, as amended, carry? Carried.

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

**Mr. Randy Hillier:** No.

**The Chair (Mr. Shafiq Qaadri):** Mr. Hillier, are you asking for a vote or simply expressing your feelings?

**Mr. Randy Hillier:** I'm calling for a vote.

**The Chair (Mr. Shafiq Qaadri):** You actually want a vote?

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Shafiq Qaadri):** Fine. I will ask for a vote. Shall I report the bill, as amended, to the House? Recorded vote?

**Mr. Randy Hillier:** Yes.

#### Ayes

Berardinetti, Delaney, Martins, Naidoo-Harris.

#### Nays

Gélinas, Hillier, Yurek.

**The Chair (Mr. Shafiq Qaadri):** I thus shall be reporting the bill, as amended, to the House.

There is no further business before the committee. The committee is adjourned.

*The committee adjourned at 1549.*







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