Legislative Assembly of Alberta

The 28th Legislature
Second Session

Standing Committee
on
Families and Communities

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Standing Committee on Families and Communities

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David Goodburn, Barrister and Solicitor, Legal Services
Mark Hattori, Assistant Deputy Minister, Child and Family Services

1:01 p.m. Thursday, September 11, 2014

[Ms Olesen in the chair]

The Chair: Good afternoon, everyone. I'd like to call this meeting to order. I'd like to start by welcoming members and staff in attendance today for the meeting of the Standing Committee on Families and Communities.

I'd like to call the meeting to order and ask that members and those joining the committee at the table introduce themselves for the record, and then we'll hear from those on the phone at a later time.

Right now I'll start. My name is Cathy Olesen, mayor – MLA for Sherwood Park and chair of the committee. [interjections] And to my right . . .

Mr. Pedersen: How do you follow that?

I'm MLA Blake Pedersen from Medicine Hat, also the deputy chair.

Ms DeLong: Alana DeLong, the MLA for Calgary-Bow.

Mrs. Leskiw: Genia Leskiw from God's country, Bonnyville-Cold Lake.

Mrs. Jablonski: Mary Anne Jablonski from the centre of paradise, Red Deer-North.

Mr. Jeneroux: Good morning. Thanks for being here, everyone. Matt Jeneroux, MLA, Edmonton-South West.

Ms Cusanelli: Christine Cusanelli, MLA, Calgary-Currie.

The Chair: If our guests could introduce themselves on the way by, too, that would be appreciated.

Mr. Hattori: Hi. I'm Mark Hattori. I'm the assistant deputy minister for child and family service delivery with Human Services.

Mr. Goodburn: I'm David Goodburn. I'm with Human Services' legal services.

Mr. Reynolds: Hi. I'm Rob Reynolds. I'm the Law Clerk and director of interparliamentary relations for the Assembly.

Mr. Fox: Good afternoon. I'm Rod Fox, MLA of the stunningly beautiful constituency of Lacombe-Ponoka.

Ms Fenske: Good afternoon. Jacquie Fenske. Not to be outdone, I represent the hub of Alberta, Fort Saskatchewan-Vegreville.

Mr. Sandhu: Good afternoon. Peter Sandhu, MLA, Edmonton-Manning, next to Jacquie Fenske's riding.

Ms Leonard: Sarah Leonard, legal research officer.

Dr. Massolin: Good afternoon. Philip Massolin, manager of research services.

Ms Sorensen: Rhonda Sorensen, manager of corporate communications and broadcast services.

Ms Rempel: Jody Rempel, committee clerk.

The Chair: Thank you.

And whoever is on the phone, if you could please introduce yourselves.

Dr. Swann: David Swann, Calgary-Mountain View.

The Chair: Len Webber?

Mr. Webber: Yes. Len Webber.

The Chair: Thank you.

Mr. Donovan: Ian Donovan, MLA, Little Bow, sitting in for Bruce McAllister, Chestermere-Rocky View.

The Chair: Thank you very much. And we have no one else on the phone?

Okay. A few housekeeping items at this time. The microphone consoles are operated by *Hansard* staff. Please keep cellphones, iPhones, and BlackBerrys off the table as they may interfere with the audiofeed. Audio of the committee proceedings is streamed live online and recorded by *Hansard*.

At this point I would ask if anyone has any corrections, additions, or deletions to the proposed agenda. Would someone move adoption of the agenda? MLA Sandhu. Those in favour? That is carried. Thank you.

Approval of previous minutes. The minutes from our previous meeting have been distributed. Are there any errors or omissions? Would a member approve adoption of the minutes? MLA Jablonski. Those in favour? That is carried.

At our last meeting this committee indicated an interest in hearing from the department responsible for the draft publication ban (court applications and orders) regulation, so today we have representatives from the Ministry of Human Services here to make a presentation and respond to any questions the committee may have on this matter.

Before I turn the floor over to our guests, I'll ask committee members to please hold your questions until the end of the presentation, at which point I will begin a speakers list.

Mr. Hattori, if you and Mr. Goodburn are ready to go, could you please proceed with your presentation?

Mr. Hattori: Thank you very much. I'd like to extend my appreciation to the committee members for engaging us in this conversation on a very important topic.

I don't know if your phone members can see this, but I'll be flipping through the slide deck. I believe the presentation was sent out to members.

Ms Rempel: Yes. They should have a hard copy of the presentation, or they can view it online.

The Chair: Good. Thank you.

Mr. Hattori: The recent changes to the publication ban in what is termed the Child, Youth and Family Enhancement Act stemmed from Minister Bhullar's five-point plan for child intervention services. Bill 11, as it's called, was crafted using the input of the Child Intervention Roundtable feedback. When passed by the Assembly in May, most of Bill 11's provisions were proclaimed and became law.

Three key areas for improvement that were listed were, one, more robust reporting requirements in the system to support public transparency and quality assurance activities; two, greater transparency and accountability in the investigation and reporting of serious injuries, deaths, and other incidents related to children receiving services; and three, an enhancement to the mandate of the Child and Youth Advocate, specifically by extending the advocate's office's investigative mandate to include deaths of

children who received services at any time in the two-year period prior to their passing.

In July the provisions in Bill 11 related to the publication ban were lifted. This additional time between then and now was used by the department to develop a draft regulation, which this committee has been engaged in discussions on.

Finally, the legislation included a requirement that the regulation governing the process for applying to the court for a publication ban be considered, obviously, by this committee.

The publication ban and the round-table conversations. Returning to that foundation for Bill 11: to recap and emphasize the central importance of empowering families; secondly, to reinforce the importance of considering the child's wishes; and finally, to acknowledge the tremendous complexity involved in this area, as the committee is no doubt aware, and to press for the identification of some criteria and principles that could help assess the impacts of various courses of action and begin to navigate this complex issue.

Key elements of Bill 11 that were not related to the publication ban were previously outlined, but we want to talk about the impact of the changes to the publication ban. The ban was essentially lifted for deceased children only. Instead of the default ban to protect the privacy of children and families, the legislation now allows for a court application for a ban in very specific cases.

What you'll see on slide 3 is what the key changes are between the new situation and what existed previously. It really provides the overview of the impact of Bill 11 on this process. It outlines both what doesn't change and what does change under this new legislation.

The legislative provisions in a little bit more detail. With the regulation under consideration by this committee it's important from the department's perspective to distinguish the role and scope of legislation versus regulation. Committee members expressed interest in understanding how the department or, formally, the director will operate in the new environment. At the end we'll outline what the policy provisions are for the department proceeding.

Starting with the legislation first and then moving into regulation, as we noted on the last slide, the fundamental shift is that this publication ban is for deceased children. The ban is no longer the default position. This signals the minister's intention that families be empowered to make these decisions. Bans will now become the exception rather than the rule and will be based upon the decision of the court, not the department, based on the circumstances of specific cases and information and evidence presented to the courts. The legislation allows an ex parte application from selected individuals, including family members, the director under the Child, Youth and Family Enhancement Act, and others with permission or leave from the court.

1:10

Ultimately, the decision to grant a ban belongs to the court. The legislation also provides some key considerations for courts to use in making those decisions. The legislation clearly outlines that the ban does not bind the family and that the parties that are bound may apply for the ban to be put aside.

There is some occasional confusion as to what the ban actually does not permit or bans. When a court orders a ban, it reverts to the old situation, where the ban limits the way in which the death can be reported, specifically by prohibiting the use of the name or photo of the child or their parents and guardians in a way that identifies them as having received child intervention services. Bans can also be set aside upon application, and the regulation and associated forms address this ability.

Regulations. The regulation as referenced in the legislation is fairly narrow, guided largely by the overarching legislation. Key sections include section 2, court practice and procedure; section 4, how orders are served; section 5, the forms used to apply in various circumstances or forms for making court orders; and section 6, when orders must be served. Absent these specific tools the process would be more complicated and cumbersome.

Finally, the department's legal services area, for the information of this committee, has worked diligently with legal services area experts in court processes in ensuring that the drafting of the regulation meets the intended regulatory criteria.

Ex parte applications. The regulation under consideration by this committee is a regulation to support and guide this ex parte application process. The ex parte nature of the application process was designed to make it as quick and as simple and easy for families as possible. Information moves quickly in this day and age, and for those who are seeking a ban, an expedited process was important if we are looking to get to the major tenet of empowering families.

The alternative to an ex parte process would require the applicant to identify interested parties before they make an application, to serve those parties as respondents or require families to get an order dispensing with service requirements and allowing an ex parte application. This is a much more complex, time-consuming, and costly process, that would likely require families to hire legal counsel or some other party to assist them.

It should be acknowledged that the director, under the Child, Youth and Family Enhancement Act, is also empowered to apply for a ban through the same ex parte process. You know, we are aware that this provision has prompted some discussion. We understand that the implementation oversight committee, that was appointed in the five-point plan, has made some recommendations for consideration by this committee. What we'd like to impress or suggest to this committee is that the department is approaching this as a family-first exercise empowering families, right back to the major tenet, and that the bans or the provision for the director to apply for a ban would be the exception rather than the rule, again also emphasizing that the decision regarding any application is a matter for the court to make a decision on and not for the director independently to put in place. As such, we will be referencing some of the departmental policy and the application of a few key criteria or considerations that will be in place before the director would consider applying for a ban.

In terms of departmental policy, again, we are very supportive of the principle of empowering families, about family choice to speak about the child who has died and make the decisions regarding how the child should be remembered and mourned. We also support the family's ability to apply to the court for a ban and to do so in a quick and an efficient and simplified manner. This support also involves providing information and resources to help them make the best informed decision during a very difficult time. We would be prepared and are prepared to offer assistance to any family who asks for that. The director will not be formally making applications on behalf of families. That will be a family's choice.

Our clear intent and commitment is that applications from the director will be the exceptions, not the rule, and very consistent with the intention of the legislation and regulation. In terms of the departmental policy, as the recent Child Intervention Roundtable noted, there's lots of complexity. It is really hard to determine, you know, or define a regulation or a policy that meets the individual differences of every single situation – no two cases are alike – but our policy identifies key considerations that we use in determining when a director may apply to a court, and that is "may." First of all, our preliminary assessment of past cases using

these considerations suggests that applications by the director will be rare. Secondly, the policy establishes a requirement that a director will notify family or other interested parties of the intent to make a court application.

So the key considerations that the director will undertake are, one, whether the deceased child was in our care under either what's called a permanent or temporary guardianship order; two, as reflected by the feedback in the round-table, whether or not the wishes of the deceased child were known; and three, a reasonable expectation of harm to siblings of the deceased child for whom the director has guardianship responsibility. The latter two considerations are similar to those identified in the Child, Youth and Family Enhancement Act that a court would use in granting an order under that act. The actual number of cases in which the child's wishes are known is relatively small. We will be endeavouring to look at the practice of child intervention workers in asking those questions where appropriate and relevant.

The more common consideration will be whether siblings for whom the director has permanent or temporary guardianship would be harmed by the publication. This isn't the harm that would undoubtedly be caused by the tragic death itself and the natural mourning processes that would happen as a result of that. This is a determination of harm in the publication of the name and photo. It would be based upon a rapid, robust assessment of those children's situations that isn't singularly determined by a caseworker or the director. It would involve all parties associated or known to be interested in that case, that file, that child. That could be other caregivers, psychologists, educators, et cetera. It's important to note here that the director's role is based in law and adjudicated, again, by the court. As in all of our dealings, we strive to engage biological or first families in these decisions to the extent that it's possible and reasonable to do so.

Finally, as noted earlier, the ban does not bind the family. It binds the publication of name and photograph in a way that identifies the child receiving intervention services. Those bound by the order, as previously mentioned, can apply to have that set aside.

As I've mentioned, the consultation activity in regard to the possible application by the director for a ban will be done in as wide a range of consultation as is possible with associated or interested stakeholders. That may include the regional director's caseworkers, a delegated First Nations agency – and that's the DFNA acronym that's there – First Nations designates if it's appropriate, and, obviously, family members. The decision will be documented on file, so there will be a paper trail regarding by whom and how and the rationale as to why the application will be made. Generally, the decision for the expedited process would be made within 24 hours of receiving a recommendation from those involved, professionals and stakeholders.

1:20

Again, the critical balance here is about the ex parte process, balancing the need for speed, efficiency, expediency, and simplicity with the transparency that is being called for. While the director's applications would be rare, we are committed to providing notification of the intent of the director to apply to any family members of the deceased child, to media, and, if applicable, to the First Nations or First Nations designate where appropriate. The notification will enable either group to attend the subsequent hearing or seek standing to be heard by the court. This, in our estimation, provides that balance between speed, simplicity, and the transparency noted.

That concludes the presentation that we have. David and I are open to any questions the committee may have.

The Chair: Well, thank you very much for your presentation.

We'll open the floor for questions.

Welcome, Ms Notley.

Ms Notley: Thank you.

The Chair: MLA Fenske, did you have a question? No?

Ms Notley, go ahead, please.

Ms Notley: Pardon me?

The Chair: You have a question?

Ms Notley: I have a whole bunch of questions. I guess I'll start, but I can alternate.

The first one. I just wanted to clarify. I did know this at one point, but I'm jumping from pillar to post, so I'm almost refamiliarizing myself as we go right now. I know that it's the legislation, not the regulation, that exempts the family from the ban, but in those cases, let's say, where there's an ex parte application made by the ministry for a publication ban and that ban is approved but the family decides that they want to proceed and speak about it publicly, my understanding of the practical realities of that situation is that the media can't report on what the family says. Correct?

Mr. Goodburn: Not quite. What the media would be prevented from reporting is exactly what they're prevented from reporting right now, which is actually associating the story with the name or picture of the child. So the media can go ahead and report on the circumstance, similar to what they do now. I mean, right now the ban is not in place for deceased children, but for living children there's a ban in place. The media can report the story; they just can't tie it to a name. That ban on the media publication would continue.

What a family would be able to do by not being bound is to self-publish on social media as part of their grieving process. So, you know, if they want to post on Facebook, that kind of thing, they would be able to that, but they can't actually have a media story that ties the situation directly to the name of the child and the fact that that child was receiving services.

Ms Notley: Okay. So even though the ban doesn't specifically apply to the family, it does essentially apply to the family's ability to speak to members of the media.

Mr. Goodburn: No. The family is free to speak to the media. It's actually that the media is bound to not publish the . . .

Ms Notley: To not report on it.

Mr. Goodburn: Well, to not report in a way that ties it to the receipt of services.

Ms Notley: Right. Okay.

Just let me know, just stop me when someone else wants to because I have a whole bunch of questions.

The Chair: I'll give you a couple, and then I'll transfer, and then I'll come back.

Ms Notley: You bet. Thanks.

The second thing I want to just clarify. As it stands now, the right for the director to make an ex parte application: does that exist in the act or the regulations?

Mr. Goodburn: That's in the act.

Ms Notley: So with the act having been proclaimed in the absence of the regulations, what is the difference between the process that the director must adhere to now, in the absence of these regulations having been written, versus what they are doing now? What is the difference between how it works for the director now that the act has been proclaimed minus regulations versus if these regulations were to be put in place?

Mr. Goodburn: Right now anyone who wants to apply for a publication ban – and that includes family members and the director – has to go through a Court of Queen's Bench process. As you know, that's quite an extensive process. They'd have to make an application to the court for, essentially, an injunction to stop publication of the names. So they have to identify all the respondents beforehand, serve those respondents, and then appear before the court for the publication ban, the injunction on publication. That process is the same right now for families and for the director.

Ms Notley: With this regulation passing, how would that change it?

Mr. Goodburn: Both families and the director would be able to use the expedited process that's been set out in the regulation. Rather than go to the Court of Queen's Bench, it would be an application in Provincial Court. It would be an ex parte application, which means that rather than identifying parties beforehand and being required to serve those parties, they simply appear before the court.

Ms Notley: Okay. I'd understood you to say that the ex parte was a function of the legislation, but it's not actually being followed right now in the absence of the regulations.

Mr. Goodburn: Right. There is not an actual process right now. What the act says is that you can follow the process as set out in the regulation, and since we don't have a regulation, you default to a process anybody could use, which is the Queen's Bench process – right? – the inherent jurisdiction of that court.

Ms Notley: How many applications have been made since the legislation was proclaimed? Have they made any applications since the legislation has been proclaimed?

Mr. Hattori: None that we're aware of.

Ms Notley: It was proclaimed in July, was it?

Mr. Goodburn: July 22.

Ms Notley: Right. Okay.

The Chair: Thank you.

Ms Cusanelli: I just had a question with respect to the actual publication ban itself, if you could clarify. The information is not allowed to be reported on under the circumstances that are described, but are the document and the file also sealed and therefore people don't have access to that document? Is there a requirement to also have files sealed?

Mr. Goodburn: Which files? The court file or the director's file?

Ms Cusanelli: Well, that leads me to another question, then.

Mr. Goodburn: Under section 126 of the act the director has a duty to keep confidential any information that we have on a child that's received services. That wouldn't change with this. The director still wouldn't be releasing information. Our confidentiality remains.

The court file is not sealed, so there would be names identified in that.

Ms Cusanelli: Okay. Thank you.

The Chair: MLA Pedersen.

Mr. Pedersen: Thank you very much. Thank you, gentlemen, for your presentation and explanation today. I appreciate that. My question surrounds past deaths of the children in care or the deaths of the children who may have received care but are maybe no longer in the system. How or will they now be reported? Is there a plan for that?

Mr. Goodburn: The department will not be reporting. As I said, under section 126 we still have the responsibility to keep that information confidential, so there would be nothing coming from the department in terms of identifying those children or that kind of thing. In terms of the parents, I mean, they are now free to report or to provide information to the media, that kind of thing, on the deaths, and you've seen that, I believe. Once it was passed, one of our ex-families came forward, that was pushing for this, and did identify their child.

Mr. Pedersen: So it is a process of the family members, essentially. It's not going to be a responsibility of the department to try and track down family members or to consult individuals to see if they want to have the death reported or released to the public?

Mr. Goodburn: Right.

Mr. Pedersen: Thank you.

The Chair: Thank you.

MLA Notley, did you have some more?

Ms Notley: Sure. Well, as you know from the previous discussions we've had, the biggest concern we have about this is that it appeared – on the face of it there is the potential for the biggest user of the enhanced and speeded-up application process for the ban, of course, to be the director and the government, and of course by going ex parte, it becomes almost a matter of course, or it could.

1:30

I know that in your presentation you talked about how the department has policy. You had your key considerations slide, and you dropped it down to three. The one consideration was whether the director was the guardian of the child immediately prior to their death. I'm wondering – maybe I missed it because that's right around the time I walked in – what's the relevance of that? Isn't it normally the case that they would be, and why would that matter?

Mr. Hattori: It matters because under the Child, Youth and Family Enhancement Act there are different levels of accountability relevant to the legislation. Guardianship is different than custodianship, which is different than a family enhancement or support agreement. This, again, is back to, you know, why the ex parte nature of the application is relevant to the director. In law under the Child, Youth and Family Enhancement Act, under a guardianship provision the director actually acts in place of a parent in a temporary guardianship or a permanent guardianship

order situation. There is a previous order of the court that determined that guardianship or legal decision-making would be with the director. So that's why that is relevant.

Ms Notley: I'm just trying to figure out how that relevance is applied because I could see it going both ways. Presumably, if there's a custodial agreement, the accountability of the government for the outcomes experienced by that child in care is greater. Are you saying, then, that if the child has or did have a higher level of a custodial relationship with the government, you would be less likely to apply for a ban? Or is it the reverse?

Mr. Hattori: I'm having a hard time tracking that question. David will . . .

Mr. Goodburn: It's the reverse. Where the director has a higher legal obligation with guardianship, we would have to have higher consideration as to whether we'd apply for a ban. If we're at the lower end of the scale, under something like a family enhancement agreement, where children are still in guardianship and custody of their parents and we're simply providing support, obviously that's a situation where we would be more likely to – well, we wouldn't interfere with the parents' decision. But where we have the legal obligation to make decisions for this child, this is one that we would have to make.

Ms Notley: That is concerning to me. If that's a criteria, then, in fact, for the ones where the government and a broader public policy perspective need to display the greatest level of accountability to the public for how well they're able to do their job as the stand-in custodial parent, we would want there to be the greatest level of transparency. If what you're telling me is that, in fact, this new and improved, convenient ex parte application will be used in those cases where the public has the greatest interest in knowing what happened, that sets off some alarm bells for me.

Mr. Hattori: The intention of the department under those circumstances in the application of this publication ban does not eliminate the public reporting requirements that are also provisions of Bill 11. Bill 11 also spoke to, as per the beginning of the presentation, the accountability that the director has to report on quality assurance activities, whether it's through the council for quality assurance or the Child and Youth Advocate, and also the ongoing quality assurance activities, whether it's deaths or reviews of situations. What this publication ban applies to is the publishing of names and photographs and the association of that with children in the system.

Ms Notley: In terms of the political debate, which occurred both in the Legislature as well as outside of the Legislature, the point of all this was not to say to Albertans: hey, you can rely on all these other internal, generic, nonidentifying, nonsituational reviews that we are going to do. Really, the idea behind all of this and what generated this was the profound failure of those processes to really clearly tell the story to Albertans. It was as a result of a rather extended fight to get access to some of these details, which really highlighted the need for addressing this ban.

So if what you're saying is, "Oh, well, yes, you're right; we probably actually will on a pretty consistent basis apply to have the ban put in place, but, you know, we still have all these other processes in place to make sure we know what's going on," the problem is that there was a fairly strong consensus. That was my understanding, anyway, even from the minister himself, that there was an understanding that there had been a bit of trouble with the trust relationship, and that's why we were looking at removing the ban: people were a little bit uncomfortable with that. Anyway, this is turning into a debate, and it's not your role to debate me, so I apologize for that.

I have a question, the third point. I think I asked it in the last meeting, and I'm not sure if we got an answer. What percentage of children in care have siblings who are also in care?

Mr. Hattori: We took a look at that question, and it is around 62 per cent of all children in care who have an associated sibling in the system or contact with the system.

Ms Notley: That includes through family enhancement as well and through the periodic . . .

Mr. Hattori: Family enhancement is not an in-care status, so that would be custody and guardianship statuses.

Ms Notley: So when you look at the application of the third consideration, you wouldn't then think about, you know, how poor John died in care and that John's sister is subject to a family enhancement agreement with her mom, say, but that would not be something that would factor into the considerations you describe in the third point there because it's a family enhancement and not a custodial relationship?

Mr. Hattori: That's right. The choice, again, or the intent of this legislation and this regulation was about empowering families, so where we do not have the ultimate accountability, that choice is up to the parent.

Ms Notley: But in 62 per cent of cases you would be eligible under this legislation to automatically seek a ban.

Mr. Hattori: Sixty-two per cent for the right reasons.

Ms Notley: Okay. Then I guess the final question I'll have before I hand it off to someone else is – I appreciate that you've mentioned the word "policy," but my question is: will we have an opportunity to see a more fleshed-out understanding of that policy? The way this is right now, it's written very – well, it's in a policy, so I hate the idea of saying okay to a regulation which earns our trust by virtue of a policy that drives it because, of course, the policy can be changed on a dime. But I'm also concerned about a policy that doesn't give more detail in terms of when and under what circumstances it drives the application of the regulation. Do we have more information on the criteria beyond what's in these slides?

Mr. Hattori: I appreciate the member's point about the policy development. You know, normally in the policy development cycle we would have the statute defined, and then we would define the intention of the policy. So what we have described here is the best draft mock-up of consideration given what we have to deal with on the table. I don't see why not, at some point in time. Our policy is all public.

The Chair: I think that at this point our discussion here is not refining policy; it's about supporting a document and how it works and the formation of it.

With that, I would like to make a couple of comments, too, and have a question. The whole process is about finding the right balance between the family's desire for privacy and the public's need to know. I've heard things, that sometimes with siblings there's stigmatization for the family when people are identified as being in care. Is that part of the reason why we're being sensitive to a publication ban?

1:40

Mr. Hattori: Absolutely.

The Chair: And do you have examples of that? Like, not detailed but . . .

Mr. Hattori: Right. You know, this bold and courageous move, made for the right reasons or in terms of being transparent and meeting accountability in the eyes of the public, is important. We recognize that. It's important that at the root of it the families are the ones who ultimately have that choice and decision to make.

What our accountability is, from a protection legislation, which is about the safety and well-being of kids who do not have the traditional parenting or guardianship roles in place, is that the director assumes that. Consequently, we do have situations where, as per the previous member's points, there are other siblings and family members to consider in this. That was a wide debate at the round-table. So it is about trying to find that right balance. How do you enable and empower families to have a voice and choice in this yet protect those who do not have a voice and can't speak for themselves? This is where we're trying to strike this balance.

The Chair: Thank you.

Any further questions at this time? MLA DeLong.

Ms DeLong: Yes. I understand that we were in the minority as a province that did have this generalized ban. My question is regarding the other provinces who normally don't have publication bans. How are they handling the situation?

Mr. Hattori: From what we know, in terms of the other jurisdictions that have similar circumstances where no ban exists, there is a reliance on the will and ethical and moral obligations of both the media and the public to use private citizens' information carefully. I think that in some jurisdictions that balance has been struck. Obviously, we don't know what that looks like here in Alberta, but we know it's possible. So this legislation, this regulation, is about taking that leap of faith to say: we need to get to a place where that social contract with Albertans is about that balance this committee has been talking about, the balance of transparency and the accountability necessary for government services and the privacy of individual citizens in this province.

The Chair: Thank you.

Any further questions at this time? Dr. Swann.

Dr. Swann: Thanks very much. I appreciated the presentation very much. It helped clarify a number of things, but particularly with respect to the ex parte applications it's still not clear to me who gets notified and what their recourse is if they have input into the application.

Mr. Goodburn: In terms of the ex parte process in general, if we're looking under section 126.3 of the act, there is no requirement there to notify anybody prior to making the application. For a family member they can simply go to court with their application. They don't have to notify the media or anyone else. They go in front of a judge, speak to the application. The judge grants the order as he sees fit.

What we have undertaken in policy from the departmental perspective is that the department will notify families, potentially First Nations, and the media so that they're aware prior to the application being made what's going forward. They have an ability to come and provide their input to us as to why or why not we should proceed. They also have the ability to appear at the hearing, and they could potentially seek standing. You know, it would be up to the individual judge to grant them standing or not to speak to the application in the courtroom, but they would have that option.

The Chair: Thank you.

Dr. Swann: Thank you for that clarity.

The Chair: Thank you.

Any further questions on the phone? Okay. I'm seeing no further questions at this time. I believe that we've wrapped up this item of business.

On behalf of the committee I'd like to thank you for the time you spent with us today and for your presentations and all the work you've put into this matter. I hope you'll be able to remain with us as I anticipate we'll be able to benefit from your experience as we proceed with further review this afternoon. Thank you very much.

Okay. At this point I would like to turn the floor over to Ms Leonard to give us an overview of the submission summary document. Ms Leonard.

Ms Leonard: Thank you. At the last meeting the committee invited written submissions from selected stakeholders, and we received 12 of those. Three of them were from advocacy and professional groups. Two were from physicians with experience in child protection issues. Two were from academics in social work. Two were from lawyers. There was also a submission from the Child and Youth Advocate, the Information and Privacy Commissioner, and the Child Intervention System Improvements Implementation Oversight Committee. One submission indicated that they were interested in presenting to the committee. That was the Alberta Association of Services for Children and Families.

Section 3 of the briefing just describes the legislative provisions, which I won't go into because the assistant deputy minister just gave a very comprehensive description of those.

Stakeholders were asked for their input specifically on the application procedure and the forms in the draft regulation, but many also commented generally on publication bans and on the substantive provision for applications for publication bans in section 126.3 of the act. So we've separated the three groups of issues in the briefing into three sections since, as you know, the committee's mandate is to look at the draft regulation rather than to recommend amendments to the act.

Section 4 of the briefing just sort of summarizes the general comments on eliminating publication bans for deceased children and on the overall application process.

Most of the submissions supported the underlying principle, which is the idea of increased transparency of the child protection system, although a few did criticize aspects of the application process; for instance, some said that it was too restrictive for the media or that a collaborative process would be better than an adversarial one in the courts.

A theme that came up both explicitly and implicitly in the submissions was the importance of balancing a number of conflicting interests such as the right of the child's family to privacy or to speak publicly, the media's right to free expression and its interest in reporting the stories, and the public interest in having an accountable and transparent child intervention system.

Section 5 of the briefing lists the issues that were related specifically to the draft regulation. I'll just go through these really quickly.

The first one was the importance of clarity and simplicity in the application process both to assist grieving and marginalized

families and to ensure consistency in the court's decision-making. Four of the submissions felt that the forms in the draft regulation were clear and understandable enough that they could be filled out by family members without a lawyer.

The next issue was that of parties who have standing to apply for a ban. A few of the suggestions included expanding the scope of who can actually apply by broadening the definitions of family member and sibling, explicitly circumscribing in the regulation rather than in policy the limited situations in which a director would be able to apply for a ban, and also introducing a simplified procedure specifically for the deceased child's siblings to apply for a ban.

The next issue was the ex parte nature of the process. A number of submissions expressed reservations about this, the intervention oversight committee and the Canadian Media Lawyers Association in particular. They were very strongly against it. They and a few others recommended including in the regulation that notice of applications be required but with provisions for exigent circumstances, like giving the court the power to shorten or dispense with the notice period or to grant an interim ban until notice was given.

The next issue is the notification of permission for publication. A few submissions raised this issue. One recommended a 30-day notice period, where the media would actually notify family members of their intention to publish the child's identity so that the family would have time to consider whether or not they wanted to apply for a publication ban.

A couple of people also raised the issue of timelines, like when in the investigation process application for a ban could be brought, and also the possibility of interim or partial publication bans.

Then in section 5.7 there are a bunch of other, more minor issues that I won't get into.

Section 6. These are issues that were related more to the provision in the act, so we didn't go into too much detail about them. People mentioned things like who's bound by publication bans, who publication bans should apply to, and the process of applying to set aside publication bans.

I think that's about it unless there are any questions.

1:50

The Chair: Okay. MLA Fenske.

Ms Fenske: Thank you very much. Thank you, both, for the presentation from Human Services and for the summary of the 12 submissions that we received. Just a quick clarification: the one that asked for the possibility of providing an oral submission, they also provided a written submission, correct?

Ms Leonard: Yes, they did.

Ms Fenske: Okay. So we have heard from everyone. I would certainly encourage us to ensure that the minister has copies of those in making any kinds of decisions that we're looking for. We are here to consider both the draft regulation as well as the form and to make it as easy as possible for the families to be able to find that balance of protecting their privacy as well as the transparency for Albertans.

If I might, I would like to propose a motion that

> the Standing Committee on Families and Communities has considered and approves the draft regulation under section 131(1)(d.1) of the Child, Youth and Family Enhancement Act as proposed to the committee by the Minister of Human Services in his letter of June 26, 2014.

In doing so, I would like to thank all of the people for their submissions. It's encouraging to see that the majority of them certainly support this way that we're moving.

Thank you, Madam Chair.

The Chair: Thank you.

We have MLA Fenske's motion on the floor. Any discussion?

Ms Notley: Well, I guess I have to take some issue with how the submissions have been characterized by MLA Fenske because it does seem to me that within the submissions we received, a number of different legitimate concerns have been expressed. In many cases they have made very definitive proposals for how to fix the concerns which exist otherwise in the regulations as currently drafted, which Ms Fenske is proposing that this committee approve, and there's a long list of them.

The issue is that we have no clear indication still about how frequently and under what circumstances the director would access the right for enhanced ex parte publication bans, that would be facilitated through the regulations. We had someone who, themselves a chair of an organization appointed by the minister, focused on overseeing the transparency and review of the system, suggested that a limit needs to be clearly put on the circumstances under which the ministry would apply for that publication ban. Based on my understanding of two of the three criteria that the ministry officials described to me today, we can expect that they would use the ex parte process for pursuing publication bans almost all the time. In so doing that, they would do that without giving notice.

Then there is the other issue. Other people have identified additional recommended changes to these regulations, that notice be given to the affected parties, for one thing. That, of course, is something that we need to be discussing here.

There's also been the recommendation that the ban that is sought – and I suspect, again, that it will be sought primarily by the director – be done on an interim basis so that at the end of the day, there's an opportunity to have a full hearing, that involves everybody who's impacted, 30 days later or something. That's another way to potentially balance those issues of trying to deal with immediacy on one hand and ensuring a fair hearing on the other.

There are concerns about the way the regulation is articulated. Because the regulation doesn't actually apply to family members, should the director be successful at getting a ban through this enhanced, quick, fast way of seeking a ban, that we are on the verge of approving over my objection, the families themselves, because they're not impacted, don't even actually have the standing to get the ban overturned. So that's a problem with the way the regulation is constructed.

Now, that's just my quick summary. I think there actually have been some other fairly significant points that were made. I think that probably does the best job of summarizing most of the concern. In essence, if this regulation is passed, we're in a position where we haven't actually lifted the publication ban; we have just undone something that was promised by the minister in January. The only way we don't undo it is that we cross our fingers and close our eyes and accept assurances that we should just trust people who have no ultimate accountability to this Legislature or this Assembly. I think the reason that we're here at this point is because there has been a consensus in the public that we're not quite ready to do that anymore and that there needs to be a clear mechanism of ensuring that that transparency is out there.

I'm all for trying to balance the needs of the families and the other family members, but from the way this is constructed, I

don't see that that's what's going to happen. What I see is going to happen is that in the vast majority of cases the ministry is simply going to apply for a ban, no one is going to know that it's happened, and the mechanisms through which the media or the families can overturn that remain almost as limited as they were before all of this happened.

I don't know if you want to break it down on an issue-by-issue basis. As I said, there's a clear list of recommendations that people have made, and I would think that what we ought to do on a systematic basis is to consider each of those recommendations that people made if we are going to give credence to the submissions that they took the time to present to this committee.

The Chair: Thank you for your recommendation. We are not here to dissect and flesh out the framework of the regulations; we are here to find a solution that provides balance. We look to the directors to use their discretion when it's in the interest to protect children.

We are ready to move forward with this. It is time for us to open the transparency up, and that's what we're here to do. I have also heard consensus at this table that we want to move forward with this, and we've heard consensus about balancing the fairness. It's not going to be information at the expense of protection. We're trying to find that balance.

I was wondering if our guests wanted to clarify anything that they just heard. Is there any clarification that you would like to make?

Dr. Swann: I have a comment at some point. Thanks.

The Chair: Sure. Thank you.

Mr. Goodburn: I just want to clarify for the committee that the ex parte process that was passed – and I probably don't need to clarify this, but I will anyway – was a policy direction that was debated and approved in the Legislature, and we can't go back through regulation and reverse that. There are other mechanisms if people disagree with that, or if they believe that the ex parte process itself should not exist, then there are other avenues to go back through that, but this regulation is not one of them. What you cannot do in regulation is create a provision that is contrary to the policy direction set in the act. That's a distinction, I think, that needs to be made to the committee. In a lot of the comments that I'm hearing, there is a melding of those two things, and we just have to be cognizant of that.

The Chair: Thank you.

Dr. Swann.

Dr. Swann: Thanks very much. That may have helped in this question, which was raised by Dr. Wasylenko in his submission, that there is no appeal process, and that appears to be something, to me, that at least needs to have some discussion among the committee.

The Chair: Well, we are not here to amend the regulations. That's not our role here today.

Dr. Swann: Do you not think that we should have some discussion around that issue, though, to make recommendations?

2:00

Mr. Goodburn: There is an appeal process. Any court order made under this regulation falls under a court order made under the act. Under section 114 of the act there is an appeal process that exists, and that process is set out in the court rules and forms regulation, which is another regulation under the Child, Youth and Family Enhancement Act. While it's not specifically set out in this regulation, that appeal mechanism does exist.

The Chair: Thank you for that clarification.

Ms Notley: Two things. It is true – that's why I began by asking you for the clarification – that the legislation talks about an ex parte process, but an ex parte process absent the legislation relies on protections inherent in the court procedures, which this regulation would essentially eliminate in the interest of fast-tracking. Sometimes fast-tracking, particularly when you're looking at judicial processes, as I'm sure the officials here are aware, changes not only the speed but also the quality and the substance of what is deliberated upon, so it is actually something that is impacted by the decisions we make today.

With respect to the comments made by the chair, I really must take great umbrage. It is absolutely the jurisdiction of this committee to delve into the minutiae of these regulations. That's why we're here. That was the direction that was given to us by the Assembly. If we are interested in doing our jobs in a systematic, informed, respectful way, then I would suggest that having asked people for submissions and having had them submit a series of recommendations for change or amendment to the regulations as they currently exist, we have an obligation to consider those recommendations on a systematic, one-by-one basis, and that's how we do our job responsibly.

The Chair: All right. Thank you for your comments, but we do have a motion on the floor from an individual who finds that the balance has been struck.

Ms Notley: Well, I just have to ask. I don't know how you can find that the balance has been struck if you haven't actually considered the specific recommendations by the people who made submissions. That seems to me to be a generalization that moves into the level of negligence in terms of the job this committee should be doing.

The Chair: Thank you.

With that, we have a motion on the floor, and I will call the question. Those in favour of the motion? Those in favour, I will ask you to state your names.

Mr. Webber: Len Webber.

Ms DeLong: Alana DeLong.

Mrs. Leskiw: Genia Leskiw.

Mrs. Jablonski: Mary Anne Jablonski.

Mr. Jeneroux: Matt Jeneroux.

Ms Cusanelli: Christine Cusanelli.

The Chair: Thank you.

Those opposed?

Ms Notley: Rachel Notley.

Mr. Fox: Rod Fox.

Mr. Pedersen: Blake Pedersen.

The Chair: Those opposed on the phone? Dr. Swann, are you in favour or opposed?

Dr. Swann: I'm opposed.

The Chair: MLA Donovan?

Ms Rempel: He's gone.

The Chair: Oh, that's right. He's left the building.

Okay. That motion has been carried.

For the record it's been the practice of this and the other legislative policy committees to make the written submissions we receive available to the public through our website. Does anyone have any questions or concerns, following this practice, that in the case of our current review they be on the website?

I'm seeing no concerns, so we need a motion to support this being posted to the website. If someone would make the motion.

Mrs. Jablonski: I move that

> this be placed on the website.

The Chair: Thank you. Those in favour? That is carried.

Ms Rempel: Just for clarification as far as our usual practice, two things that are generally removed when this information goes public are personal contact information other than a name and a city – so you wouldn't see a personal phone number, that sort of thing – and if there's a signature, we remove the signature. But all the content is still there.

The Chair: Thank you.

I would like to be on record that this information will be passed on to the minister for any changes to policy that he may consider.

Any other business to raise at this time? Dr. Massolin, did you have something?

Dr. Massolin: Well, I just wanted to inquire, Madam Chair, about whether or not the committee would like to issue a report respecting its decision here on the draft regulation. I think that it's traditionally the role of the committee to do so, and then that could be filed with the Assembly.

The Chair: Is everyone in agreement with filing of a report? Do we need a motion that a report be developed?

Okay. So for moving forward, the deputy chair and I can have a look at and approve the report, then, before it's distributed.

Dr. Massolin: We need a motion to that effect.

The Chair: A motion to that effect. Anyone? You would move a motion that

> the deputy chair and the chair would approve the policy before it's distributed.

Mrs. Jablonski: Correct. I so move.

The Chair: Thank you. Those in favour? Those opposed? That's carried.

Do we have any other business at this time for anyone to raise? Yes.

Ms Sorensen: Thank you, Madam Chair. Just further to the posting of the report, typically it's also our procedure, once it's posted, to send out a news release and/or social media messages to alert the public and the media that this has been done. Is that something the committee wishes in this instance?

The Chair: The committee is good with that? I'm seeing nods. Do we need a vote, or are the nods good enough?

Ms Sorensen: Typically, again just for the approval process, if it goes through you and the deputy chair.

The Chair: Sure. Thank you.

Could we have a quick motion on that?

Mr. Jeneroux: Yes. I so move.

The Chair: Thank you.

Those in favour? It's carried.

Any other business?

The next meeting will be at the call of the chair. Thank you, everyone, for coming out today.

Could I please have a motion to adjourn? MLA Sandhu. Those in favour? Thank you. We're adjourned.

[The committee adjourned at 2:08 p.m.]

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