



Legislative Assembly of Alberta

The 29th Legislature
Fourth Session

Standing Committee
on
Families and Communities

Missing Persons Act Review

Friday, April 27, 2018
9 a.m.

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**Legislative Assembly of Alberta
The 29th Legislature
Fourth Session**

Standing Committee on Families and Communities

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Smith, Mark W., Drayton Valley-Devon (UCP), Deputy Chair

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* substitution for Marie Renaud

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Standing Committee on Families and Communities

Participant

Ministry of Justice and Solicitor General
Kelly Hillier, Barrister and Solicitor, Legislative Reform

9 a.m.

Friday, April 27, 2018

[Ms Goehring in the chair]

The Chair: Good morning. I would like to call this meeting to order. Welcome to members, staff, and guests in attendance for this meeting of the Standing Committee on Families and Communities.

My name is Nicole Goehring, and I'm the MLA for Edmonton-Castle Downs and the chair of this committee. I would ask that members and those joining us at the table this morning introduce themselves for the record, and then I will call on those joining us via teleconference. We'll start with our guests.

Ms Kreutzer Work: Kim Kreutzer Work, office of the Information and Privacy Commissioner.

Mr. Brower: LeRoy Brower, assistant commissioner, office of the Information and Privacy Commissioner.

Ms Hillier: Kelly Hillier, Justice and Solicitor General.

Mr. Dach: Good morning. Lorne Dach, MLA for Edmonton-McClung.

Ms Woollard: Denise Woollard, MLA, Edmonton-Mill Creek.

Ms McKittrick: Bonjour. Annie McKittrick, MLA, Sherwood Park.

Mr. Hinkley: Good morning. Bruce Hinkley, MLA, Wetaskiwin-Camrose.

Mr. Carson: Good morning. Jon Carson, MLA for Edmonton-Meadowlark.

Mr. Shepherd: Good morning. David Shepherd, MLA, Edmonton-Centre.

Ms LeBlanc: Stephanie LeBlanc, Senior Parliamentary Counsel.

Ms Robert: Good morning. Nancy Robert, research officer.

Ms Rempel: Good morning. Jody Rempel, committee clerk.

Mr. Smith: Mark Smith, MLA, Drayton Valley-Devon, deputy chair.

Drever: Deborah Drever, MLA for Calgary-Bow.

Mr. Ellis: Mike Ellis, Calgary-West.

Mr. Fraser: Rick Fraser, Calgary-South East.

Mr. Orr: Ron Orr, Lacombe-Ponoka.

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

Mr. Yao: Tany Yao, Fort McMurray-Wood Buffalo.

Ms Luff: Robyn Luff, MLA for Calgary-East.

The Chair: Thank you.

I would like to note for the record the following substitutions: Mr. Carson for Ms Renaud and Mr. Dach for Ms Miller.

A few housekeeping items to address before we turn to the business at hand. Please note that the microphones are being operated by *Hansard*. Committee proceedings are being live streamed on the Internet and broadcast on Alberta Assembly TV. Please set your cellphones and other devices to silent for the duration of this meeting.

Approval of the agenda. A draft agenda for this meeting was distributed. Does anyone wish to propose amendments? On the phone? Hearing and seeing none, would a member be willing to move a motion to approve the agenda? Mr. Dach. Moved by Mr. Dach that the agenda for the April 27, 2018, meeting of the Standing Committee on Families and Communities be adopted as circulated. All in favour of the motion, please say aye. On the phones? Any objections? Thank you. The motion is carried.

Approval of the meeting minutes. We have the minutes for our last regular committee meeting. Are there any errors or omissions to note? On the phones? Hearing and seeing none, I would ask that a member move adoption of the minutes. Mr. Hinkley. Moved by Mr. Hinkley that the minutes of the March 29, 2018, meeting of the Standing Committee on Families and Communities be adopted as circulated. All in favour of the motion, please say aye. On the phones, please say aye. Any opposed? Thank you. Motion carried.

Review of the Missing Persons Act, deliberations and recommendations. As we continue our deliberations for the Missing Persons Act review, I would like to express our appreciation once again to the representatives from the Ministry of Justice and Solicitor General and the office of the Information and Privacy Commissioner who are with us today to provide technical support during our deliberations.

I would also note for the record that the office of the Information and Privacy Commissioner provided a written response to questions raised at our March meeting, which was distributed to committee members earlier this week. At our last meeting the committee came to a consensus on many recommendations to amend the act. I'm sure that we all hope this good work continues.

Also, I will once again remind everyone to please focus the deliberations on what is within the scope of the Missing Persons Act. In addition, when putting forward a proposal for consideration, I would encourage that the committee have the opportunity to discuss the proposal first before a member moves a specific motion. This seemed to work well for everyone at our last meeting.

Also, when proposing a possible motion, committee members are asked to provide a copy to the clerk or be prepared to repeat the motion as necessary until it is available on the screen. We will confirm the final wording of all motions prior to voting.

Before we proceed, does anyone have any questions? On the phones? Thank you.

Let's continue our deliberations. I'll start the rotation of speakers. As well, members on the phone can either jump in or can e-mail the committee clerk if they would like to get on the speaking rotation. Any members?

Ms Woollard: Thank you, Chair. All right. I noticed that there was a thought or there was a mention by the RCMP about changing the signatory on application forms under the act. The discussion had been about changing it from having it be signed by a commissioner for oaths to a justice of the peace. Since this is a technical question, I was wondering if Justice and Solicitor General could give us information about if this would help the use of the act.

Ms Hillier: Good morning. According to the police forces, it would help in the actual operations day to day, with just how the applications are processed and the flow of them, and I have no technical concerns at all with making that change.

Ms Woollard: All right. Thank you very much.

I would suggest that we keep this under consideration, to change the signatory from a commissioner for oaths to a justice of the peace.

The Chair: Are you wanting to recommend wording?

Ms Woollard: Yes. I would like to recommend that the wording be changed from having the application be signed by a commissioner for oaths to a justice of the peace, please.

The Chair: Wonderful. Thank you. We'll just give the clerk a minute to get that up on the screen.

Ms Woollard: Yes. Thank you.

The Chair: Is there any discussion, any questions from committee members?

As it reads right now, it says: that the Standing Committee on Families and Communities recommend that the Missing Persons Act be amended to make the signatory to applications for court orders under the act be a justice of the peace.

Any comments, questions? Anyone on the phone?

Hearing none, Ms Woollard, are you wanting to move this motion?

Ms Woollard: I would like to move this motion if this is a suitable time, Chair. Thank you.

The Chair: Thank you. Moved by Ms Woollard that

the Standing Committee on Families and Communities recommend that the Missing Persons Act be amended to make the signatory to applications for court orders under the act be a justice of the peace.

All in favour of this motion, please say aye. On the phones? Any opposed? On the phones? Thank you.

This motion is carried.

Any other members? Mr. Shepherd.

Mr. Shepherd: Thank you, Chair. Yeah. There was one item I was looking at just in the final section there, pages 16 and 17. I believe there's a section around item (f) there, around the process to obtain dental records. Now, I believe it was the AACP that sort of raised this when they were here, and what we heard from them was that the more information we can get to help identify missing people, the better off we're going to be. I mean, after all, I think none of us want to hear that somebody who's gone missing has indeed died or is lost and is not in a position where they might be found, but I think it provides important closure to family and loved ones if it's possible that the missing person can be identified and give people that closure. Dental records, I think, could be an important part of that.

But before I make a recommendation, maybe I'd like to hear from Justice on this, what you think about making a change in this regard to allow police services to perhaps be able to get access to dental records.

9:10

Ms Hillier: There is a category of missing persons – you're quite right – where there is a deceased person that is found but they are technically missing because we don't know who they are. There are currently a number of such cases in the medical examiner's office, with Justice. There is also, then, the separate system of missing person records that the police services keep, but the two sometimes can't be matched up, and the dental record, if the police had access to it, would help to match up some of these cases and, hopefully, identify some of the people that are currently sitting in missing persons in the medical examiner's office.

Mr. Shepherd: Thank you.

Chair, that being the case, then, if it is something where we have this kind of a backlog and we have an opportunity to provide closure for people, on some of these cases I think it makes sense to make this small amendment to let that happen. Perhaps, then, I can recommend some wording that could be considered by the committee.

The Chair: Go ahead.

Mr. Shepherd: I guess something along the lines, then, that we would be looking to amend the Missing Persons Act to allow police services to apply for an order to obtain access to dental records.

The Chair: Thank you.

Any members with questions or comments? On the phones?

Mr. Shepherd, are you prepared to move this motion?

Mr. Shepherd: Absolutely. It sounds like the majority of the members should be in agreement, so let's go ahead and move that.

The Chair: Thank you. Moved by Mr. Shepherd that

the Standing Committee on Families and Communities recommend that the Missing Persons Act be amended to permit a police service to apply for an order to obtain access to dental records.

Any questions? All in favour of this motion, please say aye. On the phones? Any opposed? Thank you.

Motion carried.

Any other members wanting to discuss? Ms McKittrick.

Ms McKittrick: Thank you, Chair. I'm looking at pages 14 and 15 of the issues and proposals document. We all understand how it is important that the information the police seek be provided in a timely manner and that the refusal to provide that information is devastating and can really lead to the missing person not being found in a timely manner. I would like to propose or to discuss first of all that we amend the act to include a section so that there is some penalty for anyone that refuses to provide information that has been asked for under the Missing Persons Act.

But before I do that formally, I was wondering what the office of the Information and Privacy Commissioner might have to say to that, to inserting penalties for not providing the information.

The Chair: Thank you.

Mr. Brower: I guess what I would suggest to the committee as a consideration here is that where there's an offence provision being considered with prior judicial authorization, I'm not sure our office would really have a position on that. You know, the question that I think can be considered here is that where the act properly recognizes that there are emergency situations where records can be sought without judicial authorization in trying to locate a missing person, that decision is made at the discretion of the investigating officer that there are reasonable grounds to believe that immediate access to records is required. That's a judgment call by that officer.

In my view, the person who is receiving the request from police to provide those records also has a judgment call to make. You know, they possibly can get an explanation as to what the reasonable grounds are to require the records and why those records are needed in order to find a missing person. They have an opportunity to apply some professional judgment there. An offence provision in that situation could place the consideration solely in the hands of the investigating officer, with no apparent review or oversight to ensure that that demand is necessary.

I guess the consideration that I would suggest for the committee is that in looking at the purpose of the current provision in section 5(1) of the act, where police make a demand for records in an emergency situation and there's a question about whether or not that is appropriate, the act seems to provide a mechanism currently for the officer then to approach the justice of the peace and have that considered at that point.

The Chair: Thank you.

Ms McKittrick: Are you suggesting that it would be the justice of the peace that might apply the penalty?

Mr. Brower: I'm suggesting that in an emergency situation where the police are seeking records, if we were to consider making it an offence for the records to not be provided in that emergency situation, then essentially I think the legislation would move to a position where the sole discretion as to whether or not the records should be provided in an emergency situation would rest with the police officer because it would be an offence to not provide those records in an emergency situation.

Currently my understanding of the act – and you might want to ask Justice about this – is that where the police are seeking records in an emergency situation, they can approach the person who has those records, and that person can obtain an explanation as to why the records are being sought, that they are needed in order to find a missing person, that there is an emergent situation at hand, and then they can apply their professional judgment, hearing that explanation, to provide the records. If there's a question that arises as to the appropriateness of that demand, then there is a mechanism in the act for the officer to go to a justice of the peace and get the order then for the records to be required to be provided.

Ms McKittrick: Thank you.

Would Justice have any comments to make on this?

Ms Hillier: Yes. That is precisely true. In the way the act currently is structured, if the police officer makes the emergency demand and the emergency demand does not comply, the act then gives the officer the option of going to the justice of the peace to obtain an order. I would point out that whether you're going under an emergency demand or you have an order, the act doesn't currently contain a penalty. There's no offence clause for failure to provide the records in either case, even for an order. Currently it's not just in an emergency demand that it's not there; it's not there for an order. The act only provides a penalty for misuse of the information. In terms of not providing the information, even under the order, that offence is not there.

Ms McKittrick: Okay. Thank you.

Given, you know, the answers and the discussion and that there is no penalty even – my understanding is that there's no penalty even if a justice of the peace has demanded the release of the information, right?

Ms Hillier: Correct. Not under the Missing Persons Act, no.

Ms McKittrick: Okay. I think I would just like to maybe suggest to the committee that we do look at providing penalties. I would like to move that . . .

The Chair: No, not move.

Ms McKittrick: Not move; sorry.

I would like to recommend that the Standing Committee on Families and Communities recommend that the Missing Persons Act be amended to include penalties for failing to comply with a record access order or search order.

Maybe we might want to wordsmith it a little bit to reflect the discussion given the fact that it's a justice of the peace that has given the order.

The Chair: Thank you.

Does anyone have any questions or comments or any recommendations to wordsmith the current wording?

Mr. Yao: We're going to discuss this subject, yeah?

The Chair: Yeah. Go ahead.

9:20

Mr. Yao: I'm just wondering if penalties are required. Based on what the commissioner has just described to us – and I'll put it in a situation that I'm familiar with, the health care setting. Last we spoke, I referred to the Health Information Act. I'm just wondering if there is this clarification in these acts required to allow these health professionals, in that particular case, to provide that information. I don't know if it refers to the Missing Persons Act or any other acts, as an example. Can you guys clarify that for me?

The Chair: Go ahead.

Mr. Brower: The Health Information Act has, of course, a number of provisions in it that authorize a health information custodian to disclose health information and health records. One of those provisions says that a custodian can disclose health information pursuant to an enactment of Alberta or Canada that authorizes or requires the disclosure. Another provision also says that a custodian can disclose health information pursuant to an order or warrant of the court. To me, that aligns with the Missing Persons Act.

Where the Missing Persons Act authorizes the disclosure of health information necessary to locate a missing person, the Health Information Act aligns with those provisions in the Missing Persons Act to authorize the custodian to disclose the information. Where a custodian exercises their discretion to not disclose: I think that is the question that the committee has been wrestling with in a number of meetings now. I've suggested previously and still maintain that that may be more of an education and awareness issue than it is an issue in the actual law as currently written.

The Chair: Thank you.

Mr. Yao, any follow-up?

Mr. Yao: Sorry. Just give me a sec. Could we come back to it? Do you guys want to move on for a second?

The Chair: Yeah.

Any other members wishing to comment or who have questions?

Mr. Yao: Okay. I'm ready.

The Chair: Okay. Go ahead, Mr. Yao.

Mr. Yao: Thank you, guys. To clarify, in a situation in a hospital setting where the health records person or a nurse or something like that says no to a law enforcement officer, then the law enforcement officer has to go and get a warrant from a judge. Is that correct?

Ms Hillier: It isn't a warrant, of course, because this isn't a Criminal Code procedure. This isn't a federal criminal action; this is provincial. You know, it's provincial, civil.

Mr. Yao: Sorry. My apologies for my terminology. Do they have to go and get some paperwork from a justice?

Ms Hillier: They do. They have to get an order from a justice.

Mr. Yao: It seems like a lot of effort, considering what their intent is. Is there any way that the act can be clarified, or is it truly just an education piece, and that requires a penalty?

Ms Hillier: We can certainly look at the wording of the act to make the effect clearer and, you know, change the wording so that it's

perhaps more plain language and more easily understandable. We could certainly look at that. It wouldn't affect the end result of the law, being that they currently do agree, those two pieces of legislation. However, I would say that when a piece of legislation is subject to such discussion, we would look at the wording anyway to try to see if we can clarify it and make it clearer for everyone, simply because its interpretation in practice seems to be causing confusion. So we would look at doing that and try to clarify the language.

Mr. Yao: May I speak, Chair?

The Chair: Go ahead.

Mr. Yao: If we can clarify any language that might disrupt this process – I mean, when we think about what the intent is and all the people who are involved, which should be health professionals or justice professionals, I think that they should be able to comply. Like, I just can't grasp it. But to go to a financial penalty for something like this is a bit harsh, I think. At that point, if someone is refusing to give information based on the issue at hand that they're trying to deal with, in this case a missing person, I would be questioning the ethics of that professional that was refusing the information. That would be a totally different court, I would think.

That's all I've got. A financial penalty seems a bit harsh, but if that's the will of the people, so be it.

The Chair: Thank you, Mr. Yao.

Ms Hillier: I would point out that there are two different issues here. The first is the health professional failing to comply with an emergency demand, but the second is actually failure to comply with a court order. In terms of adjusting your minds as to whether there should be a financial penalty, those are two different situations.

Ms McKittrick: I think there's been a really good discussion. It reminded me of some of the other discussions we had on this committee around the Missing Persons Act, around the need for information and the feeling by many that some of the challenge was to make sure that health professionals and others had a really good grasp of their duties under the act and an understanding. So I think it's good, and I'm glad to hear from Justice and the Privacy Commissioner that there's an interest in more information around this.

I'm happy to withdraw the motion at this point. You know, if we could really – I'm not sure how to do it, not in the motion, but we can note that we have discussed the need to better inform persons who are affected by the Missing Persons Act in terms of their understanding of the information that they can or not disclose.

The Chair: At this point it's not a motion, so there's no need to withdraw it. You just don't want to discuss this anymore?

Ms McKittrick: Okay. No.

The Chair: Thank you.

Are there any other members with comments or questions regarding the deliberations? On the phone? Thank you.

Hearing and seeing none, we'll move on to (b) of the agenda, the directions for the draft report. Now that the committee has made recommendations on the Missing Persons Act, we need to give research services instructions to draft a final report for our consideration. Ms Robert, would you like to give us an overview of this process?

Ms Robert: Certainly, Madam Chair. Thank you. Now that the committee has concluded its deliberations and made its recommendations, typically what happens is that the committee will give research services its marching orders to draft a draft final report for the committee's consideration. The final report will include all the recommendations that the committee has agreed to and the contextual information that led to agreement on those recommendations. The report typically also includes some background information with respect to the review process, who the committee met with, that type of information. Once it is prepared, it's provided to the committee for its review, and then once it's approved, it's tabled in the Assembly.

I'd be happy to try to answer any questions you might have.

Actually, one thing just before I finish. In that last discussion we had, the discussion ended without a motion, which is fine, but there was discussion about perhaps clarifying language with respect to education. I just don't know if the committee intended for the draft report to include that information. I mean, as the committee knows, they did agree to a motion the last time that included an education component, I believe, in terms of making sure that the Missing Persons Act and the Children First Act and the Health Information Act all align. I just want to make certain that that's sufficient and that I don't need to necessarily specifically include the discussion that happened today.

That's all I really had to say. Thanks.

The Chair: Thank you.

Any comments or questions?

Mr. Orr: I'll comment on that.

The Chair: Go ahead, Mr. Orr.

9:30

Mr. Orr: Overall, first of all, I think the process sounds excellent, and that's exactly what we need.

With regard to the issue of education I think the motion that was put forward at the last meeting is probably adequate, assuming that it comes with, you know, sort of the background and some of the discussion that we've had, since it has raised its head here multiple times, the education piece. I think, personally, that the motion we have already supported, with the background information and some of the discussion, would be adequate. That's my opinion.

Thanks.

The Chair: Thank you.

Mr. Hinkley: May I make a motion at this time?

The Chair: If there are any questions, perhaps we should wait until there are questions or comments if there's anything more.

Ms McKittrick: I would say that because we already have a motion around the need for education and so on, I'm perfectly okay if the report reflects that without any further discussion on it.

The Chair: Thank you.

Mr. Yao: Sorry. Did you just say that we did make a change in the reference to education? Can you guys read that one out?

The Chair: Yeah.

Ms Robert: I believe the motion that was agreed to at the last meeting was that

the government of Alberta consult with stakeholders, including the College and Association of Registered Nurses of Alberta, to

harmonize the practices and education with respect to the standards for information disclosure in the Missing Persons Act, the Health Information Act, and the Children First Act.

The Chair: Thank you.

Mr. Yao: Yeah. I suppose, in hindsight, if we could not just focus on the nurses but on all the educational institutions that surround health. There are also medical receptionists and other professionals in there as well as the health institutions. So AHS should be doing an education piece on this as well here in this province. Basically, all the health groups do have educational routes to reach out to all their members, so this should be an easy ask.

Thank you.

The Chair: Thank you.

Go ahead.

Ms Robert: Thank you, Madam Chair. Well, the motion does say to “consult with stakeholders,” including the nurses, so that, I would think, would allow for consultation with stakeholders other than the nurses.

Thank you.

The Chair: Thank you.

Mr. Yao: You’re fantastic, Ms Robert.

The Chair: Any other questions or comments? On the phone?

Mr. Hinkley.

Mr. Hinkley: Yes. If there are no other questions, I would like to move that the Standing Committee on Families and Communities direct research services to prepare a draft final report regarding its review of the Missing Persons Act in accordance with the committee’s recommendations.

The Chair: Thank you.

Any questions or comments on the proposed motion? On the phones? Thank you.

Moved by Mr. Hinkley that

the Standing Committee on Families and Communities direct research services to prepare a draft final report regarding its review of the Missing Persons Act in accordance with the committee’s recommendations.

All in favour of the motion, please say aye. On the phones? Any opposed? Thank you.

The motion is carried.

Next steps. Thank you, everyone. Having provided direction to research services regarding the drafting of our final report, we should also consider the approval process. Depending on the will of the committee, we could schedule another meeting to review and approve a report. Alternatively, as has happened in the past, the committee could authorize the chair and the deputy chair to approve the final report once a copy has been distributed to committee members for comment. Does anyone have any thoughts on this? On the phone?

Go ahead.

Ms Luff: Yeah. I think that process has worked well in the past as long as we all get a copy of the report first. So if no one has any objections, I could move a motion that would allow the chair and the deputy chair to approve the report.

The Chair: Okay. Moved by Ms Luff that

the Standing Committee on Families and Communities authorize the chair and deputy chair to approve the committee’s final report

to the Legislative Assembly regarding its review of the Missing Persons Act.

Any questions or comments? On the phone? Thank you.

All in favour of the motion, please say aye. On the phone? Any opposed? Thank you.

The motion is carried.

Before we move on to other business, does anyone have any questions about the remaining process for completing our review? On the phone? Thank you.

Item 5, other business, the Stollery Children’s Hospital Foundation correspondence. At our meeting in February the deputy chair asked that the January correspondence with the Stollery Children’s Hospital Foundation be put on the agenda for discussion at the next meeting. As we ran out of time for this item at our last meeting, it’s been carried forward to today. For ease of reference, copies of the two letters in question were included with the briefing documents for this meeting.

At this point I would ask Mr. Smith to start us off and let us know what he would like to discuss under this agenda item.

Mr. Smith: Thank you, Madam Chair. We received a letter from the Stollery asking us to deal with some issues that were prominent in their life, and I wanted to bring it to the committee. We’re aware that there is a rule that says that we cannot address other issues until we are finished our work on the Missing Persons Act. I thought that it would be interesting to have that conversation around this letter, because we could be a far more efficient committee should we be allowed to, at the discretion of the committee, be able to start looking at other issues in between what we have been mandated to look at. That was the nature of the issue here. But if my memory serves me correctly, was this issue not brought forward with a private member’s bill, and was it not forwarded to another committee of the Legislature?

The Chair: You are correct. It was Motion 501 by Mr. W. Anderson, and it has been referred to the Standing Committee on Privileges and Elections, Standing Orders and Printing.

Mr. Smith: With your permission, Madam Chair, I guess the question I’ve got, then, is this. If this issue is being dealt with by another committee, is it important for us to deal with it now, today?

The Chair: As you’re the one who brought the agenda item forward, I would suggest that perhaps that decision is up to you. But you are correct that it has been forwarded to another committee. I would just like to point out to all members that all members have the opportunity to attend any of those committee meetings if they would like to discuss it further.

Mr. Smith: I guess my suggestion would be that we could pull this from the agenda of our meeting today. I think that it’s possible for us to attend the other meetings and to have input that way, so I would make a suggestion that we could pull this off our agenda.

The Chair: Thank you, Mr. Smith.

That moves us to the date of the next meeting, which will be at the call of the chair.

Then adjournment. I would like to call for a motion to adjourn. Mr. Dach. Moved by Mr. Dach that the meeting be adjourned. All in favour of the motion, please say aye. On the phone? Any opposed? Thank you. That motion is carried.

This meeting is adjourned.

[The committee adjourned at 9:39 a.m.]

