



# **STANDING COMMITTEE ON HUMAN SERVICES**

## **Hansard Verbatim Report**

**No. 26 — April 19, 2023**

Published under the  
authority of  
The Hon. Randy Weekes  
Speaker



**Legislative Assembly of Saskatchewan**

**Twenty-Ninth Legislature**

### **Hansard on the Internet**

*Hansard* and other documents of the  
Legislative Assembly are available  
within hours after each sitting.

<https://www.legassembly.sk.ca/Calendar>

## **STANDING COMMITTEE ON HUMAN SERVICES**

Mr. Terry Jenson, Chair  
Martensville-Warman

Ms. Meara Conway, Deputy Chair  
Regina Elphinstone-Centre

Mr. Muhammad Fiaz  
Regina Pasqua

Mr. Marv Friesen  
Saskatoon Riversdale

Mr. Joe Hargrave  
Prince Albert Carlton

Mr. Warren Kaeding  
Melville-Saltcoats

Mr. Hugh Nerlien  
Kelvington-Wadena



[The committee met at 17:40.]

**The Chair:** — Good afternoon and welcome to the Standing Committee on Human Services. My name is Terry Jenson and I am the Chair of the Committee. With us this afternoon, committee members, we have Ms. Meara Conway. We have Mr. Muhammad Fiaz. We have Mr. Marv Friesen, Mr. Joe Hargrave, Mr. Warren Kaeding, and Mr. Hugh Nerlien.

Today the committee will be considering Bill No. 101, *The Child and Family Services Amendment Act, 2022*. Before we begin, are there any questions on the agenda? I recognize Ms. Conway.

**Ms. Conway:** — Thank you, Chair. This is just to inform the committee that I will be moving two motions as well as two amendments when the bill is ultimately voted on, amendments to section 24. These amendments echo entirely the recommendations that were made by the Privacy Commissioner.

The motions that I have with me today, before I move them, two . . . [inaudible interjection] . . . Okay. The first motion is with respect to, as members of this committee will know, the Privacy Commissioner penned a letter, an open letter, a 15-page letter on his concerns with the bill when it relates to privacy and access to information. The motion reads as follows:

That the committee invite the Information and Privacy Commissioner of Saskatchewan, Ronald J. Kruzeniski, to present to the committee on the subject of Bill 101 at a future meeting of the committee.

And this motion is signed by me and dated on today's date. And then we'll consider that before I move on to the next motion.

**The Chair:** — Thank you, Ms. Conway. Ms. Conway has moved a motion. Do committee members agree with the motion as read?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — No.

**The Chair:** — No? The motion is defeated. Ms. Conway, you can proceed with your second item.

**Ms. Conway:** — My second motion is with regards to a Betty Reid. And just to give the committee a bit of context here, Betty Reid will be a name hopefully that this committee recognizes, as she also penned a letter to this committee outlining some of her concerns with the legislation.

Ms. Betty Reid resides in Saskatoon. She has a mother that attended a residential school in Manitoba. She spent many years trying to access information from the Ministry of Social Services. And she has concerns about the changes to the bill, and some of them echo what the Privacy Commissioner has outlined in terms of his concerns. And I think it would really help this committee to hear from an actual human being.

Betty Reid is of Métis descent. She can speak to the significance of being able to access this information and having a regime that meets basic fairness, procedural fairness. She can speak to that and really put a face to some of the concerns around access to

information from the Ministry of Social Services.

She has very courageously kind of reached out to this committee. She has said in her letter that her situation she feels presents an ideal opportunity to learn from her experience to enhance to this legislation.

So with that I will move:

That the committee invite Betty Reid of Saskatoon to present to the committee on the subject of Bill 101 at a future meeting of the committee.

This motion is signed by myself and dated at today's date.

**The Chair:** — Ms. Conway has moved a motion. Do committee members agree with the motion as read?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — No.

**The Chair:** — No. The motion is defeated.

[17:45]

### **Bill No. 101 — *The Child and Family Services Amendment Act, 2022***

#### **Clause 1**

**The Chair:** — We will now begin with Bill 101, *The Child and Family Services Amendment Act, 2022*, clause 1, short title.

Minister Makowsky is here with his officials. I would ask that officials please state their names before speaking at the microphone. As a reminder, please don't touch the microphones. And if you're sitting at a desk, please refrain from opening the desk. The Hansard operator will turn on your microphone when you are speaking to the committee.

So, Minister Makowsky, go ahead and introduce your officials and make your opening remarks.

**Hon. Mr. Makowsky:** — Mr. Chair, the same officials as we ended off with last night. And so I will just turn it back to you, and I'm ready to take any questions.

**The Chair:** — Okay. We will now open the floor for questions. I recognize Ms. Conway.

**Ms. Conway:** — Thank you, Chair. My questions will cover a number of topics, but they will focus on concerns that I have with this legislation around access to information and changes made to that regime.

I'm disappointed that this committee has not seen fit to hear from the Privacy Commissioner. He represents an independent office, a non-partisan independent office of the Legislative Assembly. The changes in this legislation go directly to his mandate. He has a mandate to consider the impacts of changes to access to information and for the people of Saskatchewan, impacts that

would have on their rights. At a later time in this evening's proceedings, I will read from and table the open letter that he penned.

I also think it's quite unfortunate that we won't have the benefit of hearing from Betty Reid, who has a very compelling story and is of Métis descent. It's important to have voices like that at the table when we're considering legislative changes. But again that is something that I'll touch on a little later.

I will pick up where I left off yesterday. We were discussing the family review panels. I'm wondering if . . . As I noted last time, those review panels were not actualized and this government then repealed them in 2018, in May of 2018 I believe. The Justice for Our Stolen Children camp was set up in Wascana Park in February of 2018 so prior to those provisions being repealed. This was a camp that was started by two individuals and it grew and grew. And the camp was established to bring attention to the treatment of Indigenous children in both the criminal justice system and the child and family services system, the child protection system.

Minister, did any advocates that were involved in that camp or not involved in that camp, any Indigenous advocates that you know of, call on this government, this ministry, at the time to actualize those family review panels? Did they identify them as a tool that would assist in having a more meaningful Indigenous engagement prior to the apprehension stage and then right after?

**Hon. Mr. Makowsky:** — So to the committee, I think last time I mentioned, in terms of who was consulted, extensive lists here. I could go over them in detail, but there were several Indigenous groups that the ministry contacted, sent out — I'm not sure if this is the right wording — engagement packages, I guess. And obviously we wanted to hear from as many voices as possible.

So again, FSIN [Federation of Sovereign Indigenous Nations]; 19 First Nation child and family agencies, of which I believe there's 67 bands a part of that; Sask First Nation Family and Community Institute; Cowessess First Nation; six ministry-served First Nation bands; Prince Albert Grand Council; and Métis Nation-Saskatchewan. I think that is on the Indigenous side, which I think answers a part of your question.

I'll ask Ms. Eberhardt to talk about some of the history of the family review panels and shed some light on that which was, I believe, part of your question as well.

**Ms. Eberhardt:** — Tobie Eberhardt, assistant deputy minister for child and family programs. Just a little further information regarding the family review panels. So they were introduced as part of the 1989 legislation, *The Child and Family Services Act*, but they were never enacted. And part of the reason for that was the intent of them was to have an out-of-court process that a family could appeal a ministry decision around bringing their child into care.

When it was time for the ministry to work with our partners and stakeholders in the community about how we would operationalize that, we weren't able to come to an agreement. There were concerns about, that the panel members would be appointees of the ministry, that there wouldn't be that extra separation, and some concerns around confidentiality.

From that we then completed a review around our programs. And from that, we started to enhance our supports to families and our collaboration with families earlier on in the process, before we got to the court process. And so as I mentioned yesterday, some examples of that are things such as the Opik.

In Saskatoon we brought in a process where all intakes are screened through a panel process, and we've also encouraged the use of talking circles or the use of elders with families. And that's always encouraged at the front end, before we get to the point where we're maybe looking at legal action.

**Ms. Conway:** — Thank you. Minister, my question is specifically about these family review panels though. Are you aware of whether as part of the package that you sent out, which I understand, kind of was guided . . . You were clear about the three areas that you wanted to make changes around, so that guided the consultation with respect to these changes. Prior to that, 2018, did you receive any feedback that folks wanted to see these family review panels explored by your government before they were repealed?

**Ms. Kratzig:** — Kimberly Kratzig, deputy minister. So when the legislation, the 1989 legislation, sort of 30 years ago . . . Nothing was enacted in that time frame. We're not aware of, when the decision to repeal was made in 2018, if there were any . . . Like we don't have record or recollection of any concerns that were raised at that time. And in our recent consultation on the legislation, although the engagement guide did focus on the pieces that we're talking about, it was never brought up in terms of any of the other feedback or anything like that.

So to the best of our recollection we don't have anything that would suggest there was . . . Again it was in 1989 that it was first brought forward, so almost 30 years later when it was repealed.

**Ms. Conway:** — And I'm talking about that 2018 time frame. But you're not aware of anything coming to your attention in that 2018 time frame. Okay.

Minister, would you agree that this bill represents the first real substantive change to this Act since the Sask Party has come to power in 2007? I guess my next question would be, like if that is the case, why no action on this legislation given the really atrocious outcomes that were seen in this area?

[18:00]

**Hon. Mr. Makowsky:** — So I'll start with a bit of the answer here, and then I'll turn it over to the officials. But my understanding is, in 2016 there were some amendments. My understanding is they were not considered substantial. Obviously before my time as the minister, but as you mentioned, within the scope of this government.

Legislation I think is important, and you know, helps to put into, obviously legislation, some of the practices and the changes that have been made over the years, over the last 10 years let's say, but maybe even more for improvements in child welfare and how it relates to Indigenous. So we don't always of course need legislation to do by policy or by practice or by the day-to-day work that caseworkers do, for example. But this is an opportunity to put some of these practices that we've already been doing into

legislation while it's open. But several of the things that have been done — I'll get Ms. Eberhardt to talk about that — weren't obviously done prior to the legislation.

**Ms. Eberhardt:** — Our focus, you know, over the last 10 years we've really focused on how we strengthen our practice and ensure that we are providing families and children the services that they need. So we started by implementing the structure decision-making tool starting in 2012. And that included rolling it out across the province.

From there we moved into integrated practice strategies. And that was giving our staff the tools that they need to work with families, putting the families at the centre of the case planning, bringing in the resources that they needed for that.

From there we moved on to really engaging with our First Nation partners, ensuring our staff had the training that they needed to work with families from Indigenous background, families who had suffered intergenerational trauma, the effects of residential schools.

And then we moved on to around ensuring that we had robust cultural planning brought into our policies and getting our staff sort of the resources and tools they need to work with Indigenous communities to develop the plan for the children. So around our cultural case planning, it's not up to us as a ministry to develop the cultural case plan for the child. It's for us to work with the communities and the families, for them to identify what is the right plan for that child to keep them connected to their family, their community, and their culture.

So those are some of the big items that we've been working on over the last couple of years.

**Ms. Conway:** — Thank you. I have no doubt that there's work being done but, Minister, you spoke of improvements. You spoke about caseworkers. I just want to read into the record a few things that the caseworkers have said about what it's like working in the child protection area. This is from the SGEU [Saskatchewan Government and General Employees' Union] report that I've referred before, a recent report. It points out that child protection workers are overworked. Their caseloads are so high workers can't manage them.

And this is a quote from a worker: "I'm not doing any child justice." Another quote: "There's so much to be done and we're so worn thin. There's so much that could be done but that can't be done just with the staffing and the utilities we're given."

Another quote:

They need to reduce caseloads. They need to hire more staff. I can't even describe how burnt-out and overworked those social workers are. You can't meet your deadlines, but you don't want to work overtime. There's no way you can get everything done in the amount of time. The government needs to either hire more staff or approve overtime and pay the people the job they're doing.

Those are just a few quotes. So you mentioned caseworkers and the work that they're doing. Yes, they're doing hard work, but they're not given the tools that they need to do that work, and

frankly we're seeing that in the outcomes despite the hard work that's being done. You talked about improvements. I want to hear from you. How do you think this system is improving? Do you acknowledge the outcomes are bad and getting worse?

The number of children who are dying in care, getting injured in care, the number of children in care, the percentage of Indigenous kids in care, we heard from Ms. Eberhardt that that may be due to how we record those statistics. But child poverty rates, on the metrics that I can see before me, it's hard to describe what's been happening over the 10 years as improvements.

Do you acknowledge that outcomes are getting worse and if anything, they're not improving, Minister? That's a question for the minister.

**Hon. Mr. Makowsky:** — So, Mr. Chair and committee members, so I think what I was trying to get at with my answer is, there have been what I would characterize as improvements in terms of how we deal with the complex challenges and how we engage with our Indigenous partners. So I think there's been more collaboration as we've gone on over time. Those are some of the improvements.

I think we've been able to increase supports to families in particular to do as much as we can to keep more families together. In this budget there was funding put forward for supportive living in several communities in Saskatchewan. That's just one example, again on the preventative side, to keep families together.

You talked about caseworkers, and I appreciate — that's an understatement — the work that is done by those folks. We're very fortunate to have each and every one.

We've been trying . . . Including this budget, we've been increasing the number of front-line staffing levels — 199 in total; 106 on the front lines for example — since 2016. Certainly more to do. I understand that. I wasn't trying to refer to the committee or tell the committee that, mission accomplished, everything's done. There's certainly challenges.

We're doing what we can. We're trying to come forward with some of the things we've done in this budget, which I'm most familiar with, but in previous years always trying to make those improvements in staffing levels. That's the improvements I was referring to. And again, collaborating with Indigenous partners on different programs and the prevention side as well. So that's how I would talk about your question as to . . . Again quite a few questions within your submission, but that is some of the things we're trying to make improvements on.

**The Chair:** — I'm just going to jump in here as Chair. We're a little more than 30 minutes in. We have to make sure we keep this on the topic at hand which is Bill 101. So I'd encourage, Ms. Conway, you frame your questions around the clauses in the bill specifically, and to keep things on track and keep things moving in the direction that they have to go. Thank you.

**Ms. Conway:** — Thank you, Chair. I guess, Minister, part of what I'm getting at is that there are some good things in this bill. A lot of the good things are codifying things that are already being done, like putting the best interests of the children first, like

giving formal notice to agencies and chiefs and nations so that they have a formal voice at the earliest possible stage. These are all good things. But these are things that we should already be doing, and that we are in theory already doing, even that cultural connection piece.

[18:15]

And what I see missing from this bill — which really is the first opportunity that your government has taken to intervene in the policy framework dealing with child protection issues — is a lack of emphasis on some of the harder things to get at, like the prevention. Maybe you could speak to what you feel is in here for prevention.

In 2018 the Chief Coroner made a recommendation, for example, that Saskatchewan create a child death review committee. So that's a multidisciplinary committee of police, government, health care, academia, First Nation and Métis representatives, etc., who report to the Chief Coroner. And some jurisdictions have enacted this child death review committee because they see it as the best practice in terms of prevention of death and serious injury in care and other issues too.

Now I don't see any changes to, for example, the child death review process here in the bill. I don't see anything really here that will get at that prevention question. Can you correct me if I'm wrong? Are there things that you feel are in this legislation that really get to the nitty-gritty in terms of changing outcomes in this area?

**Hon. Mr. Makowsky:** — What I'd answer to that question, I'll start and then I'll have an official go into some of the more details. But the purpose has always been, the CFSA Act [*The Child and Family Services Act*], the purpose of this Act is to promote the well-being of children in need of protection by offering whatever appropriate services that are designed to maintain, support, and preserve the family in the least disruptive manner.

So that's sort of . . . hopefully answers some of your question. I'll ask Ms. Colquhoun to talk about some of the things that we think this legislation helps on the prevention side, the enhancements that are in this legislation.

**Ms. Conway:** — I just want to be really clear; I'm not talking about the legislation. I'm talking about the specific changes. Like, you don't need to go into prevention under the legislation. I'm talking about what's in this bill, the bill we're considering today. I think that's probably what you had understood. Okay. Yeah.

**Ms. Colquhoun:** — Good evening. I'm Janice Colquhoun, executive director of child and family programs.

Thank you for your question. And I do want to start out that there is a range of community-based organizations, as you know, that deliver a significant range of prevention services, including just many of them that do Indigenous service provision. I won't speak to that tonight because that's outside of Bill 101. But I just wanted to note that and could speak very excitedly about many of those activities going on.

But I will speak instead about some of the steps that we've tried to take in the Act to improve on our accountability to serving children and, in particular, Indigenous children, and driving and strengthening a legal framework that's well-positioned to drive clarity through policy and procedures and practice more than ever before.

And I'll just walk through a number of steps in the Act. And I'll start out with, you know, the definition section. Two features I'll flag would be the inclusion of the Indigenous governing body as an entity, in reference to the federal child welfare legislation known as *An Act respecting First Nations, Inuit and Métis children, youth and families*, and the feature of the Indigenous governing body representation in several areas of the Act that drive, that clarify and help promote and assist the work ahead related to Indigenous governing bodies, and both pieces of legislation working better together well in the best interests of Indigenous children.

Certainly, as you referenced, we've added a specialized section on Indigenous best interest of child, and that would, you know, again prioritize family cultural connections. It prioritizes belonging, and within that, belonging to community, family, you know, driving — as was mentioned yesterday — the Indigenous registration accountability to children. You know, in the best interests it actually increases accountability to caregiver capacity to be able to care for the Indigenous child and ensure those Indigenous connections and cultural planning is done and kind of preventative or intervention support that would be impactful.

As you referenced the sections around the increasing . . . a strengthening of framework of notice and, you know, originally our . . . We've significantly strengthened that from a position of 60 days ahead of long-term and permanent wardship applications to court to every stage of the planning of court developments as well as children in need of protection and the fact that they may not even go to court, but rather other circumstances.

This gets at the front end more than ever before around the accountability of including more, you know, agency representatives, band community representatives, whatever is necessary, of course the family, in driving a front-end plan in collaboration with services that are available to strengthen, not getting deeper into care.

You know, a few other things I can mention. The conditions on permanent wardship orders certainly strengthen more legal certainty around ensuring connections are made, and we have timelines that have additional criteria to ensure if we come up against the 24-month timeline in the Act, that there's additional criteria to be considered, recognizing, you know, taking time to heal and bring about reunification planning may take longer than 24 months.

And we have strengthened our priority of placement framework to include the other parent and as well that when long-term and permanent ward children find themselves maybe in circumstances where they need to relocate, that whole priority of framework is re-instigated. That's new, and that also then drives another stage of planning where we bring in more than ever before the people that can bring in the prevention end.

**Ms. Conway:** — May I ask a question about that priority



placement provision? I believe it's section 53, if I'm not wrong. A couple of things that I was disappointed by . . . A good step forward to codify that. Again that is, I think, like best practice, but always good to codify.

One of the things that I thought was a shame that was missing, that is that there was no providing for situations where you have a family member that may have a particularly close connection to the child, be it a kohkom or a mosôm, to get sort of a priority that is maybe not as strong as a parent's, but not as weak as just any family member, if you know what I mean. I mean, given that we have a lot of particularly Indigenous communities in Saskatchewan where grandparents are actually, you know, have a very significant role in children's lives — often are almost like, you know, what we'd consider a parent.

I wondered if that was maybe an oversight, because I think they should get legal priority by courts when assessing where children go. I guess all of these things are, in a perfect world, considered under the best interests of the child framework.

But the other thing that I was . . . That's more of a minor footnote. One of the things I was very concerned to see is that — unless I missed it — there's no codification of the need to keep siblings together when they go into care.

[18:30]

So one of the most immediate and meaningful ways to ensure cultural connections for kids is to keep them with their siblings. And we know that we say we do this. We say we prioritize it. It often doesn't happen. And the only reason for that is a lack of resources within the Ministry of Social Services, and it's tragic and it's happening across this province right now.

Why didn't you codify the need to keep siblings together, given that the whole point of all of these provisions is that cultural and familial connection piece?

**Ms. Eberhardt:** — So I'll start off by saying that part of what we've done under section 4 is we've added language to strengthen the best interests of the child as a primary consideration in the foundation of the Act.

So from there, when we go into priority placement, it was really outlining for our folks what to consider when they're looking at placement. The best interests of the child will still be what guides you. So your example you gave: if it's determined that that familial connection, that grandmother has a closer connection, the child wants to be with their grandmother, it would go based on the best interest, and that that's how we would determine it.

The other part that's always been in the Act is really around the voice of the child and engaging the child, depending on their age of course, in what their wishes are and where do they see themselves as well.

**Ms. Conway:** — I'm going to suggest that this lack of codifying the, you know, the requirement of keeping siblings together was a missed opportunity here. It's really important. And for children that are going through that trauma of being taken from their families, even when there are good reasons to do that, that's an incredible trauma to a young child or a youth. And separating

them from a sibling aggravates that trauma, and it also severs a very important cultural and familial connection.

Codifying that relationship in the legislation would send a message, not only to the folks that are working day in, day out to place kids. I take your point that courts can still consider that, but that would assume we get to the point of a litigious, you know, hearing before a judge. We know how few of those there actually are when it comes to a lot of these matters, and there are a lot of reasons for that. But codifying it would send a strong message that that's something that the ministry values and that's something the ministry expects.

And it would also come with, you know, responsibilities on the part of the ministry to properly support that so that siblings wouldn't have to be separated. Because every time I worked with a family where siblings were connected, every time a family reaches out to my office now that I'm an MLA [Member of the Legislative Assembly] about this, every time that that connection has been severed — and there's visits, and, great — but it's always due to resources and lack of resources. There's nowhere that they can send the siblings together. It's very rare that it's for any good reason, for example, if you know what I mean.

So I am going to suggest that the goal of this Act was to strengthen those familial and cultural connections, that you could not find a stronger connection that when a child is being taken away from parents that they be permitted to remain with their sibling.

I don't know, Minister, if you have any response to that entry.

**Hon. Mr. Makowsky:** — Yeah, so I think what I'd say is the legislation contemplates familial connections, that being paramount as the officials have mentioned. That includes siblings. And so this is a priority for the ministry, and using that best practice is, I think, we feel that is captured in the changes or is captured in Bill 101.

**Ms. Conway:** — Thank you, Minister. I want to move to the letter that was penned to this committee by the Children's Advocate. I did touch on one of the three areas that she identified as areas of concern. She did begin her letter by pointing to some of the good things about the bill, but noted that the bill did not incorporate all of her feedback.

Yesterday I explored my concerns as well as concerns that she's outlined with respect to the failure to extend services to youth over the age of 18, also to the PSI [person of sufficient interest] in section 9 . . . also to children and youth in the PSI program and under section 9. The Children's Advocate also has identified some concerns around the right of children to certain information, privacy protection, and the like.

And she's written that she supports proposed amendments clarifying an individual's right of access to information relevant to their own involvement with the child protection system and expanding the scope of disclosure to children in care or formerly in care to include information about parents, siblings, extended family members, foster parents, care providers, First Nations band, Métis authority, or other relevant information.

She sees the implications of the proposed subsections under 74.1

in this bill exempting information collected, used, and disclosed for the purposes of administration of the CFSA and FOIP [*The Freedom of Information and Protection of Privacy Act*] and HIPA [*The Health Information Protection Act*] as being overly broad, especially as it may restrict the right of an individual to seek an independent review of a decision.

Her last area of concern is with respect to ensuring that children and youth are informed of their rights. And she has outlined these concerns, is hopeful that they can be the subject of potential amendments. Is anything that you've reviewed in this letter from the Children's Advocate, has it persuaded you to consider amendments in any of these three areas regarding this legislation?

[18:45]

**Ms. Eberhardt:** — As part of our legislative process, we did engage with the advocate and her office, and she provided us some very thoughtful feedback. We embedded the majority of her feedback into our legislative updates, in our amendments.

Regarding the areas that you raised, so regarding the information disclosure right of review, you know, we recognize the importance of balancing disclosure with privacy considerations. We are pleased that we are able to expand on their increased flexibility of disclosure for children and former children in care, now adults, to enable them to have an increased understanding of their family connections in their community and an understanding of, you know, their time in care.

We've also increased our flexibility in disclosure regarding deceased individuals as it relates to immediate family members. Again this disclosure is going to balance the right to information and privacy, and then it will also assist with understanding more of the connections and assist in healing from intergenerational impacts.

We're committed to developing a review process related to access to information requests, as well as clarifying reasons for refusal. Information regarding this review process will be available to the public and will be provided with every access request response. This approach allows us to understand the number of people, the nature of the concerns, and other matters. It is possible that placing the review process in our legislation would be considered as part of future projects. And regarding the review process, we're planning some additional next steps on that, including the development of policy and the written materials.

Regarding the concerns around raising the age, we spoke about that yesterday. And so regarding the advocate's concerns regarding informing children and youth of their rights, you know, we recognize that it's important for us to ensure children understand their rights under *The Child and Family Services Act* both under the United Nations rights on the convention of children, and under *The Advocate for Children and Youth Act*. This policy is established in a handbook available for children and youth regarding the advocate's role, services, and contact information.

And we've developed some amendments around the best-interest-of-the-child provisions that really highlight the

obligation of serving and supporting children and youth.

**Ms. Conway:** — Thank you. I'd like to move on to just focus on the access to information regime that's been reformed with this legislation.

So while some children do well in the ministry, for too many this is a system that operates within a pretty destructive cycle. Children often move on to the streets, the correctional system, or find themselves as parents dealing with the Ministry of Social Services when they become involved with respect to their own children, in what I would describe as a very painful cycle.

Many Indigenous communities, individuals, organizations, you know, have pointed out that the Ministry of Social Services is an institution that has a legacy that has a lot to answer for, whether it's Sixties Scoop, and many consider it as an extension of the residential school system. While there's lots of reasons perhaps that, you know, many might push back and say that's not a fair comparison, it is a comparison that's often made. And there's reasons for that.

So for me it's particularly troubling to have an access to information system. So let's be clear, this will include Sixties Scoop records. This will include residential school records. This will include any record relating to an Indigenous or Métis child in care being subject to an access regime proposed here which actually takes rights away. It actually has made things arguably worse for some of these children in the removal of really the wholesale jurisdiction of the Privacy Commissioner in considering any complaints around freedom of information or access to information or privacy complaints.

So while portions of this bill are certainly a step forward — and I think you've spoken to that; I've tried to be fair in where I see that there are positive additions to this bill — this access to information regime I think really sets us back, and I think it's unfortunate.

I want to just speak for a second here about Betty Reid because she has very courageously sent a letter to this committee about her experience trying to get information from the ministry. Her journey to access information began back in 2017. Betty's mother came from a Métis community in northern Saskatchewan. She was taken into the Ministry of Social Services, or the equivalent back then, and sent to a residential school in Manitoba.

And I just want to be clear, Betty has given me permission to speak about her situation. Betty's mother struggled as a result of her time in that school. And it's fair to say that Betty's mother's experience in care impacted Betty and her siblings in, I think, far-reaching ways and ways maybe they didn't even fully grasp until after their mother was gone and passed away.

So Betty resolved to learn a bit more about her mother's experience, and she reached out to the ministry initially in 2017 with a request to access her mother's file, and then again in 2021. I guess this would have been under Minister Merriman and Minister Carr. During her second request, she reached out to my office and we connected, and she made another request. She renewed her request to Minister Carr, and as you know, the legislation as it existed at the time provided for some ministerial

discretion in terms of releasing those documents, and she got a blanket refusal from the minister.

Betty eventually made a request to the Privacy Commissioner, and her story is the subject of a report that was released as Review Report 269-2021. And as part of that report, the Privacy Commissioner pointed out that the applicant's experience . . . This is paragraph 15:

The applicant's experience is evidence of a system that does not seem to have appropriate checks and balances in place to ensure that privacy or confidentiality is not treated as an absolute when in fact other legal instruments such as FOIP already have this built in.

Continuing to paragraph 16:

The lack of my office's ability to conduct a neutral and independent review of access to child and family service program files allows Social Services to operate in secret and be accountable to no one.

Later in this report, the Privacy Commissioner expresses concerns about the lack of transparency under section 74 and reinforces that Social Services makes its decisions under a "veil of secrecy with no ability of an individual to question its practices."

So I'm going to suggest that the Ministry of Social Services has been aware of some of the problems with this regime for a long time. And the Privacy Commissioner has taken time to write a 15-page letter about his concerns with the changes under this legislation.

You know, I really thought when I saw that there was going to be a reform to this piece of legislation, that this was the opportunity to get it right. To follow the voices of experts, to follow some of the recommendations of the Privacy Commissioner.

Now just going back to Betty here for a second. After this report and when, Minister Makowsky, you became minister, because of this ministerial discretion in the Act, she reached out to you and again renewed her request. And great kudos to you, Minister. You released a good portion of those documents. They were redacted, but she got . . . I saw these documents. They were incredible in terms of the story they told, and the insight I think it offered to Betty and her siblings. I think that it was very appreciated.

And I just want to take a moment actually to read Betty's email to you, Minister Makowsky, which she attached to her letter to this committee:

As you may recall in my previous email letter to you dated September 14th, 2022, I wrote to ask you to review and reverse the denial for me to obtain access to information regarding my mother's records. In that email I acknowledged my gratitude to all the people who helped me through my search. I also said that I hoped that I could add your name to that list.

So today I want to extend my gratitude to you. You did

something that your predecessor would not do. Thank you for reversing the decision that allowed me to obtain my mother's records from child and family services. I apologize for this delayed response as I just needed time to sit with that information for a while.

[19:00]

Having taken that time, I just want to share some thoughts with you regarding this experience to access and obtain these records. The info I received confirms some of what my mother shared with me and what I know to be true. For instance, I knew this placement was challenging and touched my mother immensely.

I see it in the recurring theme, page after page describing how lonely she is and how much she misses her family. Although it is hard to read, I'm grateful to still have this documented glimpse into my mom's world at this time in her life. I see a young girl that, in spite of all the challenges she endured, I see my mom's heart and grit to push forward.

Reading these things touches me deeply. I'm proud of this young girl, my mom.

Sorry. This was a long road for Betty and, apparently, me.

Having said this, I'm also feeling a bit of disappointment to still not have documented info about why she was placed in the first place. That was the one thing I really wanted to know. I would have thought that Social Services would have documented this in the files. Or perhaps this is some of the information that has been redacted from the files for reasons I don't understand. What I've gotten here appears to be documented visits by case workers to the boarding school. Unfortunately, no info before placement.

I guess you can say two things can be true at the same time. I'm grateful for this information, yet disappointed it doesn't go far enough to understand all the circumstances that led to her being placed, considering how long and hard it was to gain these records.

Six years for Betty to get this. So kudos to you, Minister.

I can't help but wonder if I received all the documentation. And how do I know if the info redacted was really necessary or questionable? Further it strikes me as odd that this info was so private and that it took me this many years to get.

Having gone through this experience, I still see a need for the ministry to give reasons for denials, an independent overseer to review files, an appeal process for applicants who have been denied access to information. The more transparent you can be, the more accountable you become. The more information you can share, the more you help families to understand and heal.

While I understand the privacy and sensitivity surrounding these types of requests, this just reinforces a need for checks and balances. I hope you will consider this in any changes you make regarding *The Child and Family Services Act*, which I understand is under review.

I understand the Privacy Commissioner has made some recommendations that I absolutely agree with. As someone who has gone through the process, I hope my case will demonstrate what is at stake for you.

Lastly, I want to remind you that words of acknowledgement to truth and reconciliation without accountability is not genuine reconciliation. I sincerely hope you will consider the recommendations by the Privacy Commissioner.

Betty then attached this email to a letter to this committee where she sort of took us through her experience. I won't read that letter because it's a little bit, a duplicate of what she outlined to you in her email. But she does say that she feels her situation presents an ideal opportunity to learn and enhance this legislation so it creates good policy and creates an environment of trust and an added layer of accountability.

Yeah, I think the reason I've taken time to read this . . . I can't stress enough . . . You know, I was contacted by Betty in, I think, 2021, so it's been a bit of an experience. She had already been working for many years to get these documents. And when I reviewed these documents, it was incredible. The detail, what you could glean about her mother. It outlines some of her attempts to run away to get back to her family. It was extremely touching, which is partly, I think, why I'm having trouble, sort of, keeping it together here.

But this case shows so much of why we can't have a system of just ministerial discretion because as you saw, Minister, Betty's repeated request to access this information was denied by two of your predecessors and granted by you. That's not a good way to determine how to release documents that are this important to people.

The lack of guiding criteria for those decisions is one concern I have. When a minister sits down to make a decision, what should guide their decision-making? So with these changes . . . And I think there was an attempt to deal with some of the things even that Betty's case raised such as getting documents for a family member or a deceased family member. I see that effort in the legislation. But what's missing here are these elements of procedural fairness. There's no timeline for a decision. There's no requirement that a decision comes with written reasons. There's no appeal process.

So even in the case of Betty Reid, Minister, you saw fit to release these documents, but she still has questions. There's still redactions. How does she know that she's gotten everything that she's entitled to, that she's gotten everything that she should get? And surely there should be an arbiter to have a peek behind the curtain and make a determination so that Betty can go to sleep at night knowing, I gave it my best, I got everything that, you know, I was supposed to get according to standards that we can all agree matter because they are that balance that you spoke about, Ms. Eberhardt.

So if it's not going to be the Privacy Commissioner — and I'm going to suggest that it probably should be because this is what his office does day in, day out — but if it's not going to be the Privacy Commissioner, who is it going to be? Is there going to be anyone now within the ministry to take appeals when

information is not released? And why reinvent the wheel when we have the Privacy Commissioner? You know, as he points out in his letter, this is a quasi-constitutional right to access information.

I just can't stress enough, you know, it feels like it's really important to get this right, not just for Betty but her case is just such a . . . I think, persuasive and really brings a lot of colour into this, not only as it relates to some of the issues with the former regime, but now some of the shortfalls of the current regime.

Because under the current regime, what is Betty to do? She has documents before her. As she said, "I feel two things at once. I feel gratitude, but I also feel like I don't have the answers I was hoping for. How do I know I got everything I should have gotten?" So, Minister, can you speak to that with this regime?

[19:15]

**Hon. Mr. Makowsky:** — So I'll start off here. And I just recently received the letter that you've referenced, and part of the draft . . . As I draft a response, it will include the offer to meet in person. I thank you for sharing those words and how . . . If she's interested, I'd certainly like to hear those in person and hear her story in a little more detail, although you of course captured it here. But I'll turn it over to officials to talk about some of the things you talked about on the appeal process and that sort of thing, an arbitrator that we can potentially look at.

**Ms. Kratzig:** — Thank you for the question, and I just want to start by saying that the ministry absolutely acknowledges the importance of transparency and accountability related to all of these topics around privacy and access to information. They're incredibly important. We are committed to developing a review process. We are going to be working on the policy framework around that, as well as how we'll be clarifying reasons for refusal, access to the records, etc. And that process and review will be in place prior to enactment of the legislation.

So that is the work that we will be doing.

**Ms. Conway:** — Will it be the ministry that is reviewing these decisions internally? Like, will the Ministry of Social Services be establishing a committee to review denials, for example, that are challenged, internally?

**Ms. Kratzig:** — We are just beginning the process of determining exactly how the review process will work. We'll be looking at best practice across the country, taking account different feedback that we've received around this. So no final decisions around how that review process will work are in place yet. But we will be open, people will understand what that looks like when they make their requests, and it will be available before the legislation is enacted.

**Ms. Conway:** — I'm glad to hear it will be available before the legislation is enacted. I'm concerned about the constitutionality of the Act as it exists, given these are quasi-constitutional rights.

Given that with this Act the removal . . . sorry. The proposed subsection 74(1) basically attempts to eliminate rights and protections for individuals in Saskatchewan by taking away that jurisdiction of the Privacy Commissioner. And then of course as

the Privacy Commissioner outlines in great detail in his letter, the dictates of procedural fairness under the case law really require this — timeline, reasons for denial, a possibility to have the decision reviewed, and an opportunity to participate in that process meaningfully.

So I'm glad to hear that there's going to be something proposed before the changes come into effect. Do you foresee doing that through amendments to the legislation or through regulation?

**Ms. Kratzig:** — Thank you for the question. I'll just start by responding to 74(1) and the comments that you started from the Privacy Commissioner. The intent of section 74(1) is to reflect and confirm the current status quo and the existing interplay between the pieces of legislation. So I just wanted to confirm that that is the intent of 74(1). There's no change from our perspective in the addition of that section.

In response to your more specific question about the review process and how that will be enacted, that will be done in policy and procedures within the ministry as we develop that.

**Ms. Conway:** — So it won't be in regulation or legislation.

**Ms. Kratzig:** — Correct.

**Ms. Conway:** — That's disappointing to hear. In terms of your assertion that it is simply confirming what already exists and status quo, of course the Privacy Commissioner has jurisdiction unless legislation specifically bars him from considering certain documents or information. So I just want to clarify that this change to the legislation now clarifies that he has no jurisdiction over the scope of this Act.

I'll just add into the record, section 24 of Bill 101 proposes to repeal the existing section 74 of the CFSA and replace it with significant amendments, including the following:

74(1) Notwithstanding *The Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*, the use of, disclosure of and access to information in records pertaining to information mentioned in subsection (2) obtained pursuant to this Act is to be governed by this Act.

So it appears that the purpose of this new subsection 74(1) is to eliminate the right of a citizen to appeal a matter to the office of the Privacy Commissioner.

**Ms. Kratzig:** — Thank you for the question. Again I'll just state that the intent of section 74(1) is to reflect and confirm the status quo and the existing interplay between the pieces of legislation. So in the current freedom of information and protection of privacy Act there are a number of Acts that are excluded from that legislation, including section 74 of *The Child and Family Services Act*. In HIPA section 4(4), the following Acts are also identified as not being subject to several parts, and *The Child and Family Services Act* is included in that as well. So again use, access, and disclosure are outlined in the new subsection 74(1) and they are already governed by the CFSA in both cases.

**Ms. Conway:** — FOIP was passed in 1992 as intended as an overriding legislation that would apply to government, including

ministries such as the Ministry of Social Services, Crowns, other agencies. There have been exceptions. There was an exception in the existing legislation, but now this provision exempts the entire Act. It would prevent the Privacy Commissioner's office from investigating a breach of privacy complaint involving the Ministry of Social Services, and that's of concern.

I understand that there was an interplay between the ministry and the Privacy Commissioner over interpretation of the Act, but there's no question that this amendment now completely eliminates a right of any citizen to appeal any kind of complaint or concern to his office with regard to any information under this Act. That's a concern.

I mean, I'm happy to get a response. I'm happy to move forward to the voting on the clauses, but that is why I will be moving the amendment that I'm moving. It's consistent with what the Privacy Commissioner had suggested in terms of deleting that provision. He's very concerned about it. He feels that it sets Saskatchewan people back. It actually affords them fewer rights than they had before these changes came into place. If we had agreed to hear him today as a witness, you know, it would have been nice to explore some of these issues a bit more with him.

[19:30]

The other set of amendments I'm going to be moving are with respect to the lack of procedural fairness dealt within this Act. That is, I'm going to be moving amendments that provide for a 30-day response period; reasons for any decision with respect to a denial or other reasons for denial, so written reasons so they can be assessed; and a review or appeal so they can be assessed by a decision maker. Those are the basic entitlements that Saskatchewan people should have when dealing with an access to information regime, particularly one that affects . . . as I've mentioned throughout and as I think the story of Betty Reid shows us, are so significant.

And this is other stuff too. This is, you know, families having access to information about their child that dies in care, or the family member that dies in care, about their treatment. This is really serious stuff. This is life and death stuff for some families. So the failure to honour those basic procedural fairness requirements are of great concern to me. It doesn't cut it to just have an internal ministry policy that will have this process and not include it in regulation or legislation in some form.

So those are the reasons that I'll be moving the amendments that I'll be moving. And, Minister, you know, even if today you don't see fit, or this committee doesn't see fit to adopt those amendments, these are amendments that could be brought, you know, at another time when this bill is back in the House when it's being reported.

And I would urge you to look at this regime. There's a lot at stake here. That's why I took the time I took to tell the story about Betty. That's just one example. I can think of families in my constituency who have had children die in ministry care just this year in group homes . . . with family members that have questions and can't get answers to some of these issues. This is historic documents going back to the Sixties Scoop, residential schools.

People deserve to have these checks and balances in place. It's not too much to ask. So I would urge the committee to agree with these proposed amendments. And if that's not the way it goes today, I would urge the minister to reflect on this more before this legislation is passed.

**The Chair:** — All right. Are there any more questions or comments from any committee members? Okay. Seeing none, we will proceed to vote on the clauses.

Clause 1, short title, is that agreed?

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 14 inclusive agreed to.]

### Clause 15

**The Chair:** — I recognize Mr. Fiaz.

**Mr. Fiaz:** — Thank you, Mr. Chair. I would like to propose an amendment in Bill 101, clause 15, as follows:

Amend Clause 15 of the printed Bill by adding the following subsection after subsection (2):

**“(3) The following subsection is added after subsection 37(11):**

“(12) Notwithstanding section 68, an order made pursuant to this section expires on the day on which the child who is subject of the order is placed in the custody of an Indigenous governing body”.

**The Chair:** — Mr. Fiaz has moved an amendment to clause 15. Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. Carried. Is clause 15 as amended agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 15 as amended agreed to.]

[Clauses 16 to 23 inclusive agreed to.]

### Clause 24

**The Chair:** — Clause 24. I recognize Ms. Conway.

**Ms. Conway:** — Chair, I'd like to propose an amendment, well two amendments, to clause 24, the first being that:

#### Clause 24 of the printed Bill:

Strike out subsection 74(1) in Clause 24 [be struck out] of the printed Bill.

**The Chair:** — Ms. Conway has moved an amendment to clause 24. Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — No.

**The Chair:** — No. The amendment is defeated. Are there any further amendments? I recognize Ms. Conway.

**Ms. Conway:** — Yes. The proposed amendment that:

Clause 24 of the printed Bill is amended by adding the following after subsection 74.1:

#### “Reconsideration

**74.2 (1)** The minister, director, or an officer in dealing with a request for information under sections 74 and 74.1 shall comply with this section.

(2) The minister, director or an officer shall respond to a request for information within 30 days of receiving the request.

(3) If the minister, director, or an officer decides to refuse to provide information requested, the minister, director, or an officer, after hearing from the person making the request shall, within 30 days of the request, provide written reasons for the refusal.

(4) If a director or an officer makes a decision after a request for information, that person or organization can appeal to the minister for re-consideration of the decision and the minister after hearing from the person making the request shall provide a decision with written reasons, within 60 days of the request.

(5) If a person considers their information has been improperly disclosed, under section 74 or 74.1, the person may request the minister consider the disclosure and the minister may direct the ministry to request return of the information or cease providing the information in the future and the minister after hearing from the person complaining of the disclosure shall provide a decision with written reasons within 60 days of receiving the complaint.

(6) The minister shall publish on the website of the ministry any policies or procedures made in relation to section 74 or 74.1 and any regulations made under those sections”.

**The Chair:** — Ms. Conway has moved an amendment to clause 24. Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — No.

**The Chair:** — No. The amendment is defeated. Clause 24, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 24 agreed to.]

[Clauses 25 to 27 inclusive agreed to.]

**The Chair:** — His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:  
*The Child and Family Services Amendment Act, 2022.*

Now I would ask a member to move that we report Bill No. 101, *The Child and Family Services Amendment Act, 2022*, with amendment.

**Mr. Nerlien:** — I so move.

**The Chair:** — Mr. Nerlien moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Minister Makowsky, the floor is yours if you want to offer any closing comments.

**Hon. Mr. Makowsky:** — Just that I appreciate the committee's time and the questions that were put to myself and officials. And thanks to the officials for putting in a lot of hard work to draft this bill, get it ready, etc., and being here tonight. Thank you.

**The Chair:** — Terrific, Minister. Ms. Conway, do you have any closing remarks you'd like to make?

**Ms. Conway:** — Thank you, Chair. I think my questions spoke for themselves.

**The Chair:** — Terrific. As to the committee, I'd like to thank the committee for being here, as well as the minister and all the officials for all the time and the work that you put in to, you know, working for the people of Saskatchewan. I'd like to also thank the Clerks for their time, as well as Hansard, broadcast services, legislative security, and the many people that keep this institution running smoothly.

So with that, that concludes our business for today. I would ask a member to move a motion of adjournment. Mr. Hargrave has moved. All agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. This committee stands adjourned to the call of the Chair.

[The committee adjourned at 19:44.]