KIDS FIRST PARENT ASSOCIATION OF CANADA
March 2020
prepared by Helen Ward, President

The state against parents: How 'mature minor' consent came into BC law - evidence from the BC Hansard records and from amendments to the Infants Act

BC INFANTS ACT AMENDMENTS RELATED TO PARENTAL CONSENT TO MEDICAL TREATMENT

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COMMENTS ON THE ACT'S HISTORY AND PURPOSE - HELEN WARD

It is a very old Act: Charles the Second (King of UK in 1660) is mentioned twice at the end, and (Queen) Victoria is mentioned, so I assume it is a very ancient law that has been kept and updated.

The Act was amended in 1970 to lower the age of majority to 19 from 21.

This Act is about infants' (minors') property, land, contracts, etc. and the Duties and Obligations of Public Guardian and Trustee.

Perhaps this Act was for the children of wealthy parents who died unexpectedly and had assets to manage. The law did not care much about the children of the poor and they had no assets anyway in the 1600s.

It also set an age limit - 21 - perhaps for the responsibilities of parents to their children, or the crown to orphans. Perhaps the original purpose was to enforce parental responsibility for children, not to take that away or diminish it.

The Medical Treatment section is stuck in the midst of the laws about contracts and property.

There is a provision for doctors to inform parents in the 1973 version. This is removed in the 1992 version.

However, there is NO PROVISION in either the 1973 or the 1992 VERSIONS THAT SAYS MINORS HAVE A RIGHT TO PRIVACY IN , or RIGHT TO WITHHOLD, THEIR MEDICAL RECORDS OR INFORMATION FROM PARENTS - IE NOTHINGS SAYS THAT MEDICAL STAFF CAN WITHHOLD CHILDREN'S MEDICAL DATA FROM THEM. It is 'consent to medical treatment' NOT 'consent to total privacy' or 'consent to exclude parents'.

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COMMENTS ON THE 1973 AMENDMENT TO THE ACT - HELEN WARD

There was considerable debate and concern about the extreme nature of the Act, and how it gutted parents' rights.

The concern was for DOCTORS' LIABILITY.

It was brought in by the NDP.

The Opposition sought got and amended the act to reinstate the need for Doctors' attempt to obtain parental consent.

The Act was for minors 16+ yrs of age - not all minors - ie ages 16, 17,and 18.

The Act was for dental and surgical /medical treatment - not 'health care' overbroadly and vaguely defined as it is now (since 1992).

The pretext for the Act (in Hansard debates) was that parents are dead or cannot be contacted, and that 'youngsters' are out on their own traveling (1973 hippy world) , and could not get medical care, even in emergencies - which was not true. And that doctors could be sued for giving them treatment.

Doctors' organizations are mentioned as pushing for this.

Obviously PARENTS WERE NOT CONSULTED.

CONSULTATION has been a major theme in First Nations legal issues. Is there any analogous obligation to consult PARENTS in matters that have a huge impact on them? Could this be argued? (Yes.)

Doctors' LIABILITY is the main issue.

There was concern that this would bring in minors from out of province - BC WAS IT SEEMS THE FIRST TO GUT PARENTS' RIGHTS.

The MLAs clearly express discriminatory, negative sterotype, harmful views against parents in violation of Charter, BC and Can Human rights law ('family status' grounds) and international human rights agreements - including the Convention on the Rights of the Child :
Article 5

States Parties shall respect the responsibilities, <u>rights and duties of parents</u>… to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

<u>COMMENTS ON THE 1992 AMENDMENT - HELEN WARD</u>

BC Infants Act Amendment passed in July 1992 to present form (Feb 2020)
-removing age 16+ restriction
-removing requirement for Dr/dentist to make 'reasonable effort' to get parental consent
- expanding definitions of "health care" and "health care provider" far beyond dr/dentist

BELOW ARE Hansard debate/record items preceding the passing of the Bill, and after the Bill - to 1994.

The AMENDMENT WAS 'SNEAKED' in in a "housekeeping" Bill with many unrelated items in it, at the end of the Session.

THERE WAS ALMOST NO DEBATE.

IT APPEARS THE MLAs WERE LIED TO ABOUT WHAT THE LAW WAS AND WHAT IT MEANT.

It was claimed that the age restriction - 16 - would get a Charter problem and that 'common law' applies to consent to age 14 (under 15) - this sounds like BS - and that the act as it existed (1973) discriminated against 16-18 yr olds.

THIS MEANS THAT THEY THOUGHT - OR WERE LED TO BELIEVE - THAT PARENTAL CONSENT WAS REQUIRED UNDER AGE 15 AND THAT THIS WAS DEALING WITH ONLY 16-18 YR OLDS.

Or what? What does the reference to common law mean?

That argument makes no sense to me.

The fact that a few kids have dead parents or are not connected to their parents was used as pretext for this gutting of all parents' liberty rights to consent on their kids' behalf.

Clearly protecting ADULT PROFESSIONALS' LIABILITY was the main concern, not the BEST INTERESTS of children.

This amendment was slipped into a big bill that was mostly 'housekeeping' matters.

ALSO: the **MLA clearly holds discriminatory views of parents who** may 'spook' their kids, and would harm their kids. THIS IS NO LONGER OK SINCE THE BC HUMAN RIGHTS ACT CONTAINS 'family status' as a protected ground. This is DISCRIMINATION VS PARENTS OF MINORS. And "PERPETUATES NEGATIVE STEREOTYPES" about these parents: ie they may/will harm their kids. And assumes all and any 'health care providers' would/will NOT harm kids. Ie that they are safe and parents are not. This is prejudice.

The **law is based on a discriminatory view of parents** and is therefore in violation of Charter (liberty rights of parents) and BC and Can human rights law ('family status' ground).

This discrimination violated the PRINCIPLES OF FUNDAMENTAL JUSTICE which include THE PRESUMPTION OF INNOCENCE and DUE PROCESS/RIGHT TO A FAIR TRIAL parents are assumed to be guilty and not given opportunity to face the charges against them.

Abortion and birth control for minors (girls) is inferred here and was mentioned in the 1973 amendment.

It makes you wonder if some of the MLAs had got teens pregnant and wanted abortions and did not want parents to know. CLEARLY THE BEST INTERESTS OF THE MINORS IS NOT AN ISSUE. LET THE Drs deal with that and we'll make sure they are not LIABLE.

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THE 1973 VERSION OF THE ACT ADDING 'CONSENT TO MEDICAL TREATMENT' SECTION

BC INFANTS ACT
1973 AMENDMENT

Consent of infant to medical treatment

16. (1) Subject to subsection (4), the consent of an infant who has attained 16 years of age to surgical, medical, mental or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age.

(2) Where an infant has, by virtue of this section, given his consent to any treatment it is not necessary to obtain a consent from his parent or guardian.

(3) In this section **"surgical, medical or mental treatment"** means any procedure undertaken by a medical practitioner, and **"dental treatment"** means any procedure undertaken by a dentist who is a member of the College of Dental Surgeons of British Columbia, for the purpose of diagnosis or treatment, including in particular the administration of an anaesthetic, or any other procedure ancillary to the diagnosis or treatment.

(4) Nothing in this section makes a consent effective unless

(a) a reasonable effort has first been made by the medical practitioner or the dentist to obtain the consent of the parent or guardian of the infant; or

(b) a written opinion from one other medical practitioner or dentist is obtained confirming that the surgical, medical, mental or dental treatment and the procedure to be undertaken is in the best interest of the continued health and well being of the infant.

(5) This section does not make ineffective a consent which would have been effective if the section had not been enacted.

(6) A medical practitioner or dentist who treats an infant under subsections (1) and (2) without consent from his parent or guardian may provide the parent or guardian of the infant with the information the person treating the infant considers advisable.

Historical Note(s): 1973-43-1.

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THE 1992 VERSION OF THE ACT REVISING 'CONSENT TO MEDICAL TREATMENT' SECTION

1992 Legislative Session: 1st Session, 35th Parliament
THIRD READING

The following electronic version is for informational purposes only.
The printed version remains the official version.

Certified correct as passed Third Reading on the 2nd day of July, 1992
Ian D. Izard, Law Clerk.

ATTORNEY GENERAL

BILL 81 -- 1992
MISCELLANEOUS STATUTES AMENDMENT ACT, 1992

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Industrial Development Incentive Act

1 ***Section 6 (2) (c) of the Industrial Development Incentive Act, S.B.C. 1985, c. 43, is amended by striking out*** "$225 million." ***and substituting*** "$235 million."

Infants Act

2 ***Section 16 of the Infants Act, R.S.B.C. 1979, c. 196, is repealed and the following substituted:***

Consent of infant to medical treatment

16 (1) In this section

"health care provider" includes a person licensed, certified or registered in British Columbia to provide health care;

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care.

(2) Subject to subsection (3), an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and where an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian.

(3) No request for or consent, agreement or acquiescence to health care by an infant shall constitute consent to the health care for the purposes of subsection (2) unless the health care provider providing the health care

(a) has explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care, and

(b) has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests.

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CURRENT VERSION OF THE ACT - SECTIONS REFERRING TO CHARLES THE SECOND

This Act is current to February 19, 2020

http://www.bclaws.ca/civix/document/id/complete/statreg/96223_01#section1

If child has no guardian

51 (1) If a child has no guardian or if the guardian appointed is dead, refuses or is incompetent at law to act,

(a) a director under the *Child, Family and Community Service Act* is the personal guardian of the child,

(b) the Public Guardian and Trustee is the property guardian of the child, or

(c) paragraphs (a) and (b) both apply,

as circumstances require, unless a tribunal of competent jurisdiction otherwise orders.

(2) If a director under the *Child, Family and Community Service Act* is the personal guardian of a child, the director has all the powers that a guardian, as a guardian of the person of a child appointed by will or otherwise, had on May 19, 1917 in England under Acts 12, **Charles the Second,** chapter 24, and 49 and 50 Victoria, chapter 27, section 4.

(3) If the Public Guardian and Trustee is the property guardian of a child, the Public Guardian and Trustee has all powers that a guardian, as a guardian of the estate appointed by will or otherwise, had over the estate of a child on May 19, 1917 in England under Acts 12, **Charles the Second**, chapter 24, and 49 and 50 **Victoria,** chapter 27, section 4.

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HANSARD EXCERPTS 1973: DEBATE AND AMENDMENT TO THE PROPOSED BILL

see full discussion - this is just one quote: it was for age 16

https://www.leg.bc.ca/documents-data/debate-transcripts/30th-parliament/2nd-session/30p_02s_730405a

AN ACT TO AMEND
THE INFANTS ACT

HON. MR. MACDONALD: Mr. Speaker, this is a short bill which will **enable young people who are without parents and often without guardians**, and many of whom are wandering throughout the country and suffer illnesses, diseases, accidents and require medical or dental treatment. Under the law as it stands, of course, they are under the age of 19 — the age of majority — and the doctor or the dentist may very well say, and does say, "I cannot treat this child, because that child cannot give his consent to the treatment, and I am therefore committing assault."

That may sound a rather strange thing in an emergency situation, that anyone should take that point of view, but that is the law. We provide therefore, that in circumstances where the child needs care and has no parents or guardians, or in the other case where the child has parents or guardians, but because of the nature of the disease or something of that kind or because narcotics are involved, the child will not reveal who and where his parents or guardians may be. So in these circumstances, the proposal is that the child should be able to consent to the necessary treatment to himself or herself from the age **of 16 years on**. I move second reading of the bill.

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Interjection by an Hon. Member.

HON. MR. MACDONALD: Yes, that's right because there are many cases where the youngster won't say where they are.

MR. SPEAKER: The Hon. Member for Oak Bay.

MR. G.S. WALLACE (Oak Bay): Mr. Speaker, this is a very far-ranging bill, perhaps going a way beyond what might appear on the surface. I'm thinking particularly in terms of the permissive society that we live in. In particular in young people, I'm considering the whole question of the responsibility of a doctor in prescribing such things as birth control pills to a teenage girl, where the doctor is well aware of the total family situation.

Mr. Speaker, I'm not trying to in any way moralize, I just want to have some debate on the degree to which this bill intends to throw the whole issue wide open to any doctor to treat or advise any person 16 and over to any degree that he considers necessary in a medical or surgical sense.

There's a tremendous increase, even in the years that I've been in practice, in such problems as venereal disease, drug abuse, and as I say, the whole field of contraception. It is a very frequent occasion where the physician who knows the whole family is confronted with the daughter in the family seeking birth control pills. When the physician asks the patient whether or not she's discussed it with her parents, quite frequently the answer is no. When you ask the daughter does she think it would not be a reasonable thing to discuss this with her parents, again the answer is usually no.

As I say, I'm not taking sides on whether this is a moral issue or not; I'm asking the questions from a purely legal point of view from the practicing physician.

A **physician in England** was recently put through a great deal of distress. He was temporarily suspended and the whole thing went to court and went to appeal court. I can't remember just how long it all took. I think he was finally vindicated or forgiven his offence. But, it was based exactly on this point; he had prescribed contraceptive measures for this young lady without the consent of her parents. Her parents found out and were very angry and took the doctor to court, or at least had him brought before the college or the medical council in the United Kingdom. It caused a tremendous furore.

Now if this Legislature feels that this bill is well worth while and fulfilling a purpose which is in keeping with our modern society, then this is fine. I certainly wouldn't for a moment even question the bill in terms of emergency treatment such as the Attorney General mentioned. It makes obvious sense that if there is a measure of emergency, the medical person has to put the need of the patient first. If you can't find the parents or there is a real pressure of time to get the treatment carried out, then I think society recognizes that.

But in my reading of the principle of the bill, Mr. Speaker, this really opens the door wide open to a doctor to treat or advise any person over 16 without in any way consulting the parents.

One could talk at great length on this but I do feel that in the particular areas that I've mentioned of drug abuse and venereal disease and contraception…is this — and when the Attorney General winds up the

debate — **is this in fact the intent of this bill?** Is it **to open the situation wide open** so that for any purpose with which a teenager comes to the **doctor the doctor is not legally open to civil or criminal action by parents** if he in his judgment advises, prescribes or treats that over-16- years-old patient as he sees fit?

MR. SPEAKER: The Hon. Minister of Health Services and Hospital Insurance.

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HON. D.G. COCKE (Minister of Health Services and Hospital Insurance): Mr. Speaker, I certainly recognize the feelings of the Hon. Member across the way with respect to this bill. This bill has been suggested for a number of years and has been really **called for by the College of Physicians and Surgeons.** The fact of the matter is that whether we like it or not — and we have to live in today and this is reality — that there are any number of young people on their own under the age of 18.

Now I think that the responsible doctor naturally is going to be in touch with those parents where there's a normal family connection with the doctor's office; But the doctors today are working in a position — and the hospitals…and I've been around the province a good deal since this bill has been on the order paper and I've heard nothing but praise for the Attorney General for bringing forward this bill, because of the fact that now they can deal with problems as they're confronted with problems.

I can remember a case not long ago in the Okanagan Valley where a hospital was confronted with a situation of a child — that is under the age of majority — where they couldn't treat this person and there was no family within miles. We're living in very dangerous times — it's **dangerous for the doctors** if they treat them and it's dangerous for the patient if they don't.

I think that this is the age when we must make these kinds of decisions and not become reactionary about them. I'm not indicating that anybody here would, but I am indicating that it's much-needed legislation, endorsed by every responsible medical health group in the province that I know of, Mr. Speaker.

MR. SPEAKER: The Hon. Second Member for Vancouver–Point Grey.

MR. GARDOM: Mr. Speaker, concerning the remarks of the last speaker on the danger to the doctors, we haven't had any illustration in front of the House today of what dangers the doctors have experienced. The thing that troubles me about this bill is that it's a **total elimination of parental consent**. That may not be the intent of the bill but that's what it says. There could indeed be parental refusal to a particular measure taking place, and the 16-year-old infant's consent would completely override the parental refusal. We're not dealing with a situation of emergency, because in situations of emergency the doctors and the hospitals act in any event.

There's another item that I note within the bill. There's not even any requirement upon the medical people and the dental people to even seek parental consent to deal with any infant between the ages of 16 and 18. I just wonder why that's not in there. At least that would be some kind of check and balance.

If the parental consent could not be obtained, fine and dandy. Maybe you could even have a safeguard of perhaps going to the public trustee. We're not dealing with emergency situations here. That's no stumbling block. This was carried on quite successfully over the years by the very, very effective job and the most conscientious job that has been done by the professions.

Within here there's one other item that similarly may be disturbing, maybe not. I'd like to hear the views of the Minister when he closes the debate on it.

We find under section 4 that there's not even a responsibility to furnish the parents with responsibility to do that. He — i.e., the doctors — "may" do it if he wishes to. It's totally discretionary.

Well, it's not discretionary under the laws as it stands today. I think this is an "Open Sesame" bill. I think that it's not a question of being reactionary at all; it's a question of maintaining some of the checks and balances instead of throwing them all out.

What is this great, great emergency and this terrible, terrible problem that the medical people are experiencing? We've not been informed at all about about that.

MR. SPEAKER: The Hon. Member for North Okanagan.

MRS. JORDAN: Thank you, Mr. Speaker. The Hon. Second Member for Vancouver–Point Grey (Mr. Gardom) I think has said very eloquently, as he always does, some of the points that I would have liked to have made.

I am speaking for myself, Mr. Speaker, on this bill: not the views of the caucus, Because I in principle agree with the objectives that the Attorney General is trying to get at in many instances; but what isn't laid before this House is that there are two kickers in this bill, one of which I personally cannot support.

The first kicker is this whole matter of a physician having the right to save a life of a young person, a juvenile, when in fact that action is not compatible with the views of the parents for religious reasons and, perhaps in this modern day society, for trendy reasons.

I think that the Attorney General would have been more worthy of support in this bill if he had made this very clear: that this will allow a physician to use his own discretion in trying to save the life of a child whose parents would not agree to that type of medical practice such as blood transfusions, when this is opposed to the religious view of the family.

I think this can be accepted, because this is a matter of saving a life. All medicine is dedicated and predicated on the concept of saving life to all extent. But in this instance this section is in conflict with the other kicker that's in the bill; and that is that the bill

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will allow a 16-year-old girl to seek an abortion without her parents' consent as I understand it and, as the Member for Vancouver–Point Grey said, without any effort on the part of the doctor to discuss this matter with the parents.

HON. MR. MACDONALD: That's left up to the doctor.

MRS. JORDAN: Yes, Mr. Minister, I know it's left up to the doctor. But I suggest that the Minister of Health Services and Hospital Insurance is not correct in giving the impression that the medical society and the doctors of this province approve of this practice in whole. There's a great division within the medical profession itself about this.

What is in danger of happening is that a young girl, for her own reasons, may well pressure doctors into performing or try to pressure doctors into performing a medical treatment that they do not agree with. There's much controversy today, medically and morally, as to whether or not an abortion after a certain period of time is in fact beneficial to the mother and society or, in fact, destroying life. This, Mr. Minister, is where the kicker comes in.

In your presentation and in your thoughts about this bill you suggest that it's to improve health — and to a large degree this can't be argued with — and that it is compatible with the medical dedication of saving life. But included in this, intentionally or unintentionally, Mr. Minister, is the potential of destroying life. I suggest that if this is a matter of which the Attorney General is aware, then he must make a statement about this in the House.

Mr. Minister, through Mr. Speaker, there is still much controversy on a scientific basis as to whether abortions, even though done under the most modern medical techniques and under the most proper medical conditions, do not leave residual medical problems. Certainly on a repetitive basis there is much evidence to suggest it does; such things as cervical incompetency at later years when a woman is married and wants to have children and is then, because of cervical incompetency, subject to repeated miscarriages, as they are then delicately called.

I think, Mr. Minister, this is a medical opinion that must be weighed very carefully. Is a 16-year-old girl — regardless of why she's pregnant, this is not the point — in discussion with a doctor capable of making this decision: (1) the destruction of life, and (2) the possibility of involving herself in future medical complications which would bring her great tragedy?

One of the things that's never discussed on the subject of abortion or miscarriages is the psychological effect on the mother. At 16 they're pretty resilient. Probably up to 18 and 20 they're very resilient. But when one gets older and wants children and has lost children through miscarriage, has anybody ever talked to those mothers and seen how they feel?

I suggest that there is a very strong psychological trauma and that this can be enhanced if the child or fetus is lost through abortion. It may well not show up until the later years of their life.

Anyone who has dealt in the field of mental health knows that many problems appear in a woman's life when she's in her late 30's and 40's and 50's. Some tend to revert back to feelings of guilt because of activities they involved themselves in when they were teenagers. Some tend to reflect back to incidents that happened in their life.

As a society today we are moving very strongly towards a problem that has existed for years in the life of a woman in her mid-forties, in the so-called menopausal years. When the family is gone and when by nature men become more attractive and women perhaps don't age as gracefully, there's a tremendous human reaction of a feeling of not being needed and the ensuing complications.

Mr. Minister, through you Mr. Speaker, psychiatric review will make you aware that this is not something that has come and gone with the ages. It's an inherent human reaction. It's a stress reaction and we're in an age of increasing stress. With reasonable review of the situation, Mr. Minister, I suggest that the danger of an older woman — today's teenager — suffering in her late 40's and 50's a severe emotional reaction over abortion, is very much a thing to be contended with in the future. It's very much a matter to be dealt with by medicine and by society.

I think that if you look at this, Mr. Speaker, you'll recognize that where there has been consultation with the parents and perhaps with other people, even though it was painful at the time, and if the abortion were performed under sound medical conditions and a reasonable, emotionally mature approach, if there are guilt reactions in later life, these would be less of a problem on the basis of the circumstances of the abortion.

But that emotional problem later in life may be compounded with the guilt feelings that may well come if this were done without the parents' consent and knowledge and without — as the Hon. Member said

— any other checks and balances. **To pass this type of legislation in this particular instance would leave us abdicating our responsibilities as legislators.**

Mr. Speaker, I would say that in trying to present a bill for which there is much need in many instances and which I would support, he has brought in a bill with a general emphasis on saving life. But it's too wide open. There's a real conflict. I don't consider myself a radical person and I don't think many doctors consider themselves **radical people**. But you've brought in a very serious emotional conflict and a moral question. That is, is this bill so wide open

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that it leads to taking of a life at the discretion of a 16-year-old, without the proper checks and balances?

And, Mr. Minister, through you Mr. Speaker, I think you must have some type of a review board within the medical profession when some of the more extreme treatments allowed under this bill are undertaken. That goes back to the Hon. Member's views on checks and balances.

While I would like to support 90 per cent of this bill, I regret to say that I personally cannot support the section which refers to the matter that I've just discussed.

MR. SPEAKER: The Hon. Second Member for Victoria.

MR. D.A. ANDERSON (Victoria): Thank you, Mr. Speaker, both Ministers who have spoken in this debate have referred to young people travelling. One used the words "young people on the road." The other used the words "youngsters travelling." The fact is that the bill will apply not only to the small proportion of people in that age group who are travelling at any one time but to all young people, whether it is at the height of summer when they are travelling, or whether it is at other times of the year when most of them will be at home or at least within some distance of their parents or guardian.

We feel that while the government may be definitely trying to do something for the young people travelling but in the process we're also doing a great deal for the others who are not on the road. Therefore it appears that in going after this one specific group of travelers, we are taking in a very large class of citizens indeed.

The bill worries me in that on the one hand it seems to completely override at any stage and any place the question of parental control or consent. The explanatory note which says, "The purpose of this bill is to amend the Infants Act to allow an infant…. ." should really read "any infant." That's essentially what is being done. Any infant, any person between 16 and 19, can take advantage of it.

The principles of this are complicated by section 3. Of course we're not in the detailed reading. But it gives me the impression that there could be a situation where, if the parent were nearby and parental consent were given, the Act might become completely meaningless. There is this confusion with the wording of that section which could, I think, make ineffective any provision whatsoever of the Act.

The question comes up of what would happen if the parent gave consent and the child refused it? I don't know and I don't think that it's very clear in this Act. Perhaps it might reverse the situation. I'm simply not sure.

There's another aspect which again is a question of principle with some fairly substantial implications. That relates to the child outside a province, the travelling child to whom this Act was specifically meant to apply. What happens then, in the case of British Columbia children out of the province? I'm not exactly sure of this. Or, as my Hon. friend on my left mentions, what happens to Alberta youngsters who

are in British Columbia? Presumably, the British Columbia law would apply but there seems to be some complication here.

AN HON. MEMBER: The B.C. law would have to apply.

MR. D.A. ANDERSON: There is a question, though, o**f extra-provincial effects of the legislation.**

In any event, we know that there have been calls for the bill. At the same time we know that it's quite possible for medical practitioners to insure themselves against the possibilities which the Minister of Health (Hon. Mr. Cocke) spoke about. I believe the premium is a very small one on an annual basis. It's something around $1 a week for such protection. It doesn't appear to be the major problem that some have mentioned.

We think that there are enough problems of principle in dealing with the question of age of consent and the question of permission which young people could give for treatment that we would move at this time that this second reading debate be adjourned until the next sitting.

Interjection by an Hon. Member.

MR. SPEAKER: There's a motion that must be dealt with first, a motion to adjourn the debate made by the Hon. Second Member for Victoria.

HON. R.M. STRACHAN (Minister of Highways): This bill has been before the House for enough time.

Interjection by an Hon. Member.

MR. SPEAKER: Well, I've got to put the question. Are you ready for the question?

Motion negatived.

MR. MORRISON: I'd like to speak about parents whose children are still at home and who are struggling with parental responsibility and who want to know what their family health is.

I do agree that there should be some arrangement for those children who have left home, who are no longer in any way under the care and control of the parents, so they can have medical treatment if they need it. But I strongly believe that the parents who do have their children at home and who are still trying to do the best thing they can for them should **not have this taken away from them.**

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MR. SPEAKER: The Hon. Member for North Peace River.

MR. SMITH: Thank you, Mr. Speaker. Just a few brief comments because I think a number of Members have already canvassed some of the real problems that beset parents and members of the medical profession today.

It would seem to me that in presenting this bill we have overreacted to what is really a frustrating problem to the medical profession. That is the matter of rendering treatment to minors between the ages of 16 and 19.

I know it must be frustrating to people who are practicing medicine to have young people come in to them for what the young person might suggest is emergency treatment. They canvassed the problem very carefully, but if that young person says that they cannot reach their guardians or they refuse to give the names of their guardians, it's pretty difficult for a member of the medical profession to really know

whether in fact a guardian was available or not. It could very well be that the child being treated lives no more than 10 blocks from the doctor, because in a large city how are you to know.

It seems to me that in an attempt to relieve the medical profession from taking upon their shoulders some very serious responsibility for making decisions in the treatment of young people, that we have gone overboard with this bill. There's no question that people will object to it on moral and religious grounds. There's no question that we get involved in young people the age of 16 seeking advice from doctors concerning matters they do not wish to discuss with their parents and will not reveal their parents' name for that reason.

In bringing this bill before the House, I must say that I believe the Attorney General has attempted to be **guided by the wishes of the medical profession** and their association. But I would also suspect that even within the profession itself there are strongly held views, both for this type of legislation and against it. It may be that the majority of people who made their views known have spoken in favour of it at a meeting of the association and therefore that resolution, in one form or another, came before the Attorney General, as it has in past years, and he was asked to act upon it.

I feel that because of the wide-scale ramifications of a bill of this type we will probably become inundated by youngsters from other parts of Canada who realize what this type of legislation can mean. That's true. It can happen and it will happen, Mr. Attorney General. Rather than reveal to their parents a particular condition, especially a condition of pregnancy, they'll soon migrate to the west coast for treatment — and you and I know the type of treatment that they'll be looking for.

Certainly it's a matter that has deep psychological ramifications. I believe that in preparing this bill we have brought before this House one that **over-reacts to a situation** and **therefore it is not good legislation and should not be passed.**

MR. SPEAKER: The Hon. Second Member for Vancouver Centre.

MR. G.V. LAUK (Vancouver Centre): Thank you, Mr. Speaker. Just responding briefly to some of the comments made on the other side of the House, I just wanted to say that in my view, in answer to the Member for Oak Bay (Mr. Wallace) the civil responsibility will be largely the same, but that civil responsibility on the part of the doctor must be viewed by a court taking this new section 23 into consideration. That does not mean, however, that doctors are to abdicate any responsibility with respect to consulting parents or with respect to responsibility to investigate fully what the child — 16 years or over — wishes in the way of medical treatment and is advisable vis-à-vis that person's health, having in mind what comments the Member for North Okanagan (Mrs. Jordan) made about the future effect this may have.

In dealing with the Second Member for Victoria (Mr. D.A. Anderson), Mr. Speaker, I can say that there's no complication involved in section 23 as proposed under Bill 37. British Columbia law applies to any person in this province. I think that I've dealt with the civil responsibility, He raises an interesting point with respect to consent or refusal by parents. What if the child refuses? That is one of the most unlikely situations that probably wasn't foreseen at the time of the drafting of this Act. I don't know of a situation that would arise that would be similar.

Dealing substantively with the bill, Mr. Speaker, there was the issue raised by the Member for Oak Bay with respect to birth control. This can be linked up with what was mentioned by the Member for North Okanagan with respect to abortion.

Yes, there are situations where persons who receive abortions at a young age suffer far-reaching effects emotionally that demonstrate themselves in later years. However, what we are talking about here is the consent of a child.

There are other aspects which go into abortion, under the Criminal Code and there is the Code of Ethics by the College of Physicians and Surgeons and so on. We cannot talk in a vacuum and this section does not appear in a vacuum. There is a responsibility of physicians to consult with one another, to consult with parents, according to their own ethics.

Secondly, there is a board of review, a panel which permits or does not permit abortions in this country. Under those circumstances this board, I take it — and I must understand this to be the case — will review

[Page 2230]

clearly those matters which the Hon. Member for North Okanagan raised.

You see what I am worried about, and what this section solves, is that in the past I have seen many situations where **parents are imposing their will upon a child to the physical and mental detriment of that child** — not necessarily for religious reasons. In modern times I would suggest that that's one of the minor reasons that this **damage to the child** of 16 years of age and older is done.

I am thinking, for example, of a parent and child who are not so close as to — I'll rephrase that. You see, if there is a parent, or two parents and a child, who are close and have an understanding between them, then we can expect that there will be consultation before any medical treatment goes on and that the parents will in fact act within the interests of the better health, both mental and physical, of that child.

Where the damage is done is where the parents who are irresponsible or who are ignorant impose their will upon the child to that child's detriment. And this is why section 23 is as wide as it is and as essential as it is.

MR. SPEAKER: The Hon. First Member for Vancouver–Point Grey.

MR. McGEER: We're doing an "After you, Alphonse" act here.

Mr. Speaker, I recognize what the Minister of Health said in speaking to this bill, and I am sure that he's correct, that the majority of medical practitioners would prefer to see an Act of this kind. Nevertheless, Mr. Speaker, the Attorney General did not make a very strong case in favour of the Act at the time he introduced it. I dare say that the Act itself would not be accepted by the more conservative members of the medical profession.

The reason being, of course, that the current law requires the practitioner to make some effort to contact the parents — except in instances of dire emergency where they're going to go ahead and give medical treatment if somebody's injured in an accident. They're not going to try and get to eastern Canada before they give a pint of blood. If somebody walks in with an acute abdomen, they're going to go up to surgery and they'll get hold of the parent later. So that in emergency situations the individual is going to receive treatment regardless.

HON. MR. MACDONALD: It's still assault.

MR. McGEER: Of course. But, Mr. Speaker, we have dealt with this for centuries. The Attorney General may say it's assault, but he knows perfectly well that neither he nor any other lawyer could hope to win a case in court of that kind. I think that's why you don't have cases of that kind going to court.

Mr. Speaker, you have to see the other side of the coin. The other side of the coin is that it relieves the physician of one of his important responsibilities, which is to look after things that go beyond the immediate complaint of the patient. He has to consider the family situation of every patient who comes in, even if it's only for a hangnail. Because that is part of his responsibility as a physician.

This Act relieves the medical practitioner of that responsibility and makes it east for the underlying cause of a person to become a wanderer, to go completely unattended. It is time-consuming. It is inconvenient. But at the same time, Mr. Speaker, it does constitute the best medical treatment.

What this bill is inclined to do, I'm afraid, is to encourage second-rate medical treatment.

I quite understand the points which the Member for North Okanagan raised, and there's little doubt that abortion will be one of the major questions that will come up as a result of this bill. Many physicians feel that the current requirement for parental consent leads to reluctance on the part of a teenager to seek an abortion, making what is a fairly simple procedure during the earliest stages of pregnancy into one that's considerably more complicated the stage of a hysterectomy.

So, Mr. Speaker, there are two sides to this bill: one where early and easy intervention on the part of a physician may be helpful, but some, other situations where the removal of responsibility on the part of the physician will act against the best interests of the patient.

I really think this subject should be canvassed more thoroughly, Mr. Speaker. I was astonished that the Government would not consider an adjournment on this particular bill so that some of the Members could supply data for themselves that the Attorney General should have presented at the time of the discussion of the bill.

I didn't think…

AN HON. MEMBER: That's been on the order paper for weeks.

MR. McGEER: Well, Mr. Speaker, the bill may have been on the order paper for weeks, but I think the Attorney General and the Minister of Highways (Hon. Mr. Strachan) and all those people who objected to ramrod legislation, should consider that one of the important responsibilities of the Minister in bringing in a bill is to explain his case for the need.

And, Mr. Speaker, the Attorney General in this particular case has not done a good job. He hasn't built the case for the bill. While the Minister of Health (Hon. Mr. Cocke) did manage to convey to us the general support of the medical profession, it is not unanimous as the Minister of Health suggested.

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AN HON. MEMBER: It never is.

MR. McGEER: Of course it never is. But I nevertheless think that there are many facets to this particular legislation that have not been adequately canvassed by the Members. This is not an important measure of Government policy. It is a mistake to rush the bill through under these circumstances. For these reasons I would move adjournment of this debate until the next sitting of the House.

Interjections by some Hon. Members.

MR. SPEAKER: Is there any further debate on the question? There has already been one motion of adjournment in this debate and there's been no intervening proceedings, so I must call on the next Member who wishes to debate.

The Hon. Member for West Vancouver–Howe Sound.

MR. WILLIAMS: Thank you, Mr. Speaker, I don't intend to be long. I had hoped that the Second Member for Vancouver Centre (Mr. Lauk) might have continued a little longer. The direction in which he was going would have taken him into a position of direct opposition to this bill. I'm sure that that's why he very quickly took his seat.

Mr. Speaker, I don't think there is any Member of the House who doesn't understand the concern that the Attorney General raised in opening this debate. There are many occasions, quite properly, when young people away from home, unable to obtain parental consent, do require medical treatment, and there is a difficulty for the medical practitioner in affording that treatment in those circumstances.

Now the medical practitioner can always refuse but he may not wish to. Under the law as it presently stands he may be obliged to refuse in order to protect himself from some liability. The comments the Attorney General has made across the floor indicate quite clearly that his concern is with regard to the trespass and the assault that there is to the infant if these services…

Interjection by an Hon. Member.

MR. WILLIAMS: You said you'd explain yourself when you closed the debate, Mr. Attorney General. It really is not *An Act to Amend the Infants Act*. It is an Act for the protection of the medical and dental practitioners. Mr. Speaker, I have no objection if the Minister wishes to bring in legislation for that purpose because there are many ways in which it can be obtained.

If you want to protect the medical and dental practitioner in circumstances such as this, spell out quite clearly that where the consent of the parent cannot be obtained due to the absence of the child from his home, then upon the confirming opinion of one additional medical practitioner — or maybe two if you want to make it — a doctor can proceed to render the treatment without constituting a trespass and being liable for a charge of assault or any other civil consequences that there may be.

If that's the aim of the Attorney General, that's fine; we have no objection. But the legislation should say so. It is not good enough to bring in *An Act to Amend the Infants Act* and say that the purpose of it is this, when the words in the amendment go much, much further than what the Hon. Attorney General has said. When we pass legislation in this House we must fully recognize that the subsequent interpretation will depend upon the clear meaning of the words, and the clear meaning of the words do not restrict in any way the implication of this amendment in the way that the Attorney General indicated when he opened this debate.

I would think in those circumstances that the Hon. Attorney General would have seen fit to accept the adjournment. It may be that he will see fit to make some significant amendments, but these matters obviously have not been clearly considered.

Now I don't want to get into the question of birth control pills and abortions and so on, but I do want to say one thing, and that's the extra-provincial effect of this legislation.

Interjection by an Hon. Member.

MR. WILLIAMS: That's right. There'll be children travelling from Alberta, Saskatchewan and Ontario to British Columbia. Those children will come from homes where the parents are entitled to believe that no medical services will be rendered for their child without their consent. And suddenly they arrive in the Province of British Columbia on a summer tour of some kind, and then something takes place that that parent in Alberta or Saskatchewan or wherever would never have consented to.

Yet the child at the age of 16 or 17, not recognizing the implications of the treatment which is to be rendered, allows it to go ahead and the doctor is free of any obligation — even free of the obligation to try to get the consent, to pick up the phone, to send a telegram, whatever the case may be, and ask the parents. There is not this responsibility except as the conscience or the ethics of the profession may dictate.

The Attorney General says "of course." Is the Hon. Attorney General suggesting that there have never been medical practitioners in this province who have not seen fit to go beyond their oath?

MR. GARDOM: A third of a million a year.

[Page 2232]

MR. WILLIAMS: A third of a million a year running some abortion clinic against the law.

MR. LAUK: They would do this against the law anyway. What are you talking about?

Interjections by some Hon. Members.

MR. WILLIAMS: Have you never heard of situations that have existed in the dental fraternity?

Mr. Speaker, I say to the Attorney General: bring in legislation which will clearly protect the medical practitioner if that is your wish…

HON. MR. MACDONALD: That's not the intent of the bill.

MR. WILLIAMS: It is the intent of the bill and you said so when you opened the debate. It's exactly what you said: Children who are travelling around and need medical attention and can't get the consent. That's right. And it's to protect the doctor, not the child.

MR. SPEAKER: Is there any other debate before the Hon. Attorney General closes the debate?

The Hon. Attorney General.

HON. MR. MACDONALD: Mr. Speaker, let me just deal with that last point. I think that the Hon. Member for West Vancouver–Howe Sound, in trying to construe this and entitle this bill an Act for the protection of the medical and dental profession, is doing a grave disservice to the medical and dental profession and to the obvious intent of this bill. It is a most unworthy interpretation to put upon it. It's the Infants Act and it shouldn't be twisted from that purpose by that Member or any other Member. It's to protect children in the circumstances I mentioned.

AN HON. MEMBER: You're taking away the parents' consent.

HON. MR. MACDONALD: …where there may be no parents at all. That's point one. Where the parents cannot be found, that's point two. Where there's no guardian, that's point three. Where the child…

After all, we're dealing with a child who might be 16 years of age in a fairly emergency situation. That's today… If that party would get out of the past and live in the modern world, they would understand what this bill is all about. You're living in the past. Asking for adjournments — the Hon. First Member for Point Grey (Mr. McGeer) can't make up his mind about this bill after six or seven months and wants another adjournment. Really.

Interjections by some Hon. Members.

HON. MR. MACDONALD: This bill is intended to enable children in the kind of case I've described, subject to the ethics of the doctor or dentist or psychiatrist, to receive care in circumstances which may mean life or death for that child.

Interjections by some Hon. Members.

HON. MR. MACDONALD: Yes, that's an extreme. But in another case it might mean the mental welfare and health of that child.

The Liberal Party of British Columbia says, "Put it off. Rely on the old common law." Let the doctor be frightened by the old common law, which says that if he lays a hand on that child of 16, it's battery and trespass. The Liberal Party says, "Let's retain that old law." Don't let the healing physician reach out to help a child in need, but let the law of battery and assault prevail. That's what they're saying.

Interjections by some Hon. Members.

HON. MR. MACDONALD: In simple terms, the Act is merely saying that it shall not be necessary for the doctor to obtain the consent. In most cases, I would expect that there will be not only consent but consultation and anxious consultation. I would think that the ethics of both the dental and medical professions would provide, as a matter of course, that there would be parental consultation wherever possible. That's already part of the ethics of the professions concerned and it doesn't have to be a part in this bill.

All this bill is doing is saying that there are other cases out there where young people need help and that the old common law of England should not stand in the way of those emergency case. I move second reading.

Motion approved; second reading of the bill.

Bill No. 37 ordered to be placed on orders of the day for committal at the next sitting of the House after today.

HON. MR. BARRETT: Second reading of Bill No. 41, Mr. Speaker.

AN ACT TO AMEND THE EQUAL
GUARDIANSHIP OF INFANTS ACT

HON. MR. MACDONALD: In moving second reading of Bill No. 41, this is a simple Act and one which I hope the Liberal Party has read. (Laughter).

At the present time, upon the death of a father and mother, where no guardian is appointed by will

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or something of that kind, an infant is made the guardian of the Public Trustee. The bill proposes that in respect of the guardianship of the infant as a person, the guardian should be the Superintendent of Child Welfare, who deals with children and people. But if the child happened to be left assets by the deceased parents, that should be handled by the Public Trustee.

So it's a simple thing in those terms. I think it allots the proper functions to the two functions of government: children to the Superintendent of Child Welfare; property and estate matters to the Public Trustee. I move second reading.

MR. SPEAKER: The Hon. Member for North Peace River.

MR. SMITH: Thank you, Mr. Speaker. I believe that the intent of this bill is good and will provide a means by which the courts can deal effectively with children left without parents.

Certainly the person in the province most qualified to look after them physically is the Superintendent of Child Welfare or someone within his department, where they become involved in that unfortunate situation. In the matter of estate property to which they may eventually become entitled, the Public Trustee will act on their behalf.

There is, though, one thing that I think the legal profession should do through their association in the Province of British Columbia. This is to somehow get across to parents the importance of having a will and providing a guardian for infant children. They should try to impress the importance of this upon people generally, regardless of how large or small the estate might be.

Too often today there are cases of a man and his wife being wiped out unexpectedly in accidents involving cars or some means of public conveyance. In those situations, it's surprising the number of times we become involved with people with minor children, dying in-testate. There is no proper provision or will for the courts to refer to.

So I believe the Bar association and perhaps even the Attorney General's department would be doing a great service if they were to prepare a brief or some sort of release that would go out periodically to advise people of the position in which their minor children might be placed if they don't take the time to draft even a simple will. Thank you, Mr. Speaker.

MR. SPEAKER: The Hon. Member for West Vancouver–Howe Sound.

MR. WILLIAMS: Thank you, Mr. Speaker. This is a positive improvement to the *Equal Guardianship of Infants Act*. We'll support it.

It's interesting that we should be debating Bill 41 immediately following the *Infants Act* amendment. It's quite obvious that in the case of the death of both father and mother, where there's no guardian at all, the Government feels it important that the person of the infant be under the protection of the Superintendent of Child Welfare, and that the infants estate — all that money and property — should be looked after by the Public Trustee. **There's all kinds of checks and balances there.**

But under the previous legislation, the consent of the infant is good enough. Why don't you let the infant run his or her own affairs if they happen to be over the age of 16? This is schizophrenic legislation that we have from this Government.

I would have thought that the draftsman of this bill would have talked with the draftsman of the other bill. Maybe they could have gotten together and seen how much the Superintendent of Child Welfare or any of the superintendent's officers or officials might have been able to assist in the other legislation.

The Government seems to understand the propriety of this in some circumstances, certainly insofar as estates are concerned. This party has so much concern about property, but not with respect to anything like medical attention.

MR. SPEAKER: The Hon. Second Member for Vancouver–Point Grey.

MR. GARDOM: Mr. Speaker, this is a logical bill. It's clear, concise and certain. It fills a need and it's a very useful measure. I'd like to know how it came about. Maybe the Attorney General should defend his position. (Laughter).

MR. SPEAKER: The Hon. Attorney General.

HON. MR. MACDONALD: Mr. Speaker…

MR. SPEAKER: Excuse me. It's my duty to warn you that he closes the debate.

HON. MR. MACDONALD: I call for the question.

Motion approved; second reading of the bill.

Bill No. 41 ordered to be placed on orders of the day for committal at the next sitting of the House after today

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HANSARD EXCERPTS 1973: AMENDMENT TO THE BILL TO REQUIRE DR TO TRY TO GET PARENTAL CONSENT

https://www.leg.bc.ca/documents-data/debate-transcripts/30th-parliament/2nd-session/30p_02s_730412z

April 12 , 1973

MR. WILLIAMS: If any question arises, through you Mr. Chairman to the Premier, as to whether the practitioner has made a reasonable effort to communicate with the parents, that question would arise in the event that any action were brought against the practitioner for carrying out the particular procedures or treatment that he did without getting consent. The reasonableness of his effort would be determined by the court in the course of those proceedings.

Mr. Chairman, subsection (3) as it presently stands is really a meaningless section. It says, "Nothing herein shall be construed as making ineffective any consent which would otherwise have been effective…" That section can be left out.

The purpose of the amendment is this, Mr Chairman: before a medical practitioner or a dentist carries out treatment upon an infant over the age of 16, he should first be obliged to establish that he's made a reasonable effort to obtain the consent of the parent of that child. If he has made a reasonable effort and if the consent is refused, then the second portion of my amendment would permit the medical practitioner or dentist to give the treatment or undertake the procedures if he receives the confirmation from another medical…

HON. MR. MACDONALD: Make your motion. We'll accept it.

MR. CHAIRMAN: Shall the amendment pass?

Amendment approved.

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HANSARD EXCERPTS 1973: BILL PASSED

April 17, 1973

https://www.leg.bc.ca/content/Hansard/30th2nd/30p_02s_730417p.htm

The purpose of the amendment, which is before the committee now, is to restore the protection so that we have the situation where if an infant over the age of 16 finds himself in an emergency situation, the medical attendant can proceed with treatment under the common law protection. In the case of a non-emergency medical service, then the medical practitioner must either make reasonable effort to obtain the consent of the parent of the infant or alternatively, obtain the written confirmation from another medical practitioner. I move the amendment.

…

Bill No. 37, *An Act to Amend the Infants Act*, read a third time and passed.

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HANSARD EXCERPTS 1992: BILL INTRODUCED IN 'HOUSEKEEPING' BILL

https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/1st-session/19920623pm-Hansard-v5n1#2919

1992 Legislative Session: 1st Session, 35th Parliament
HANSARD

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Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

TUESDAY, JUNE 23, 1992

Afternoon Sitting

Volume 5, Number 1

MISCELLANEOUS STATUTES
AMENDMENT ACT, 1992

Hon. C. Gabelmann presented a message from His Honour the Lieutenant-Governor: a bill intituled Miscellaneous Statutes Amendment Act, 1992.

Hon. C. Gabelmann: Those familiar with the history of this place will recognize the significance of the introduction of the miscellaneous statutes bill. I'm delighted to be able to introduce this bill at this particular time. I'm sure all members would agree.

Members should know that although this bill contains mainly amendments to a variety of statutes that are of a **housekeeping or technical nature,** there is an amendment to the Infants Act which **could be described as significant,** and there are amendments to the Pension Benefits Standards Act which address a difficult situation. In addition, this bill contains amendments to a number of other statutes administered by various government ministries. Additional statutes to be amended are the Industrial Development Incentive Act,

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Land Title Act, Manufactured Home Act, Ministry of Forests Act, Municipalities Enabling and Validating Act (No. 2), Nurses (Registered Psychiatric) Act, Pension (College) Act, Pension (Municipal) Act, Pension (Public Service) Act, Pension (Teachers) Act, Pension Statutes (Transitional Arrangement) Act and Trade Development Corporation Act. I will elaborate on the nature of these amendments during second reading of this bill.

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HANSARD EXCERPTS: THE BS REASONS THE BILL WAS BROUGHT IN
https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/1st-session/19920624pm-Hansard-v5n4#3056

1992 Legislative Session: 1st Session, 35th Parliament
HANSARD

Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

WEDNESDAY, JUNE 24, 1992

Evening Sitting

Volume 5, Number 4

The House met at 6:01 p.m.

Introduction of Bills

MISCELLANEOUS STATUTES
AMENDMENT ACT (No. 2), 1992

The present section of the Infants Act governing the consent of persons under the age of majority is repealed and replaced by a new section. The present section is unsatisfactory in the following ways. It discriminates against persons from 16 to 18 years of age by imposing requirements on them which do not apply to persons under the age of 16. In this way, the section is vulnerable to a challenge under the Charter of Rights and Freedoms. As well, the section refers only to surgical, medical, mental or dental treatment and is silent for other types of health care. The amendment removes **arbitrary** distinctions between minors of different ages, and makes the requirements for consent to health care uniform for all minors.

The new section will also encompass health care and health care providers generally. The amendment will provide that a minor may not consent to health care unless the health care provider has explained to the minor the nature and consequences and reasonably foreseeable benefits and risks of the health care, has been satisfied that the minor does indeed understand the nature and consequences and reasonably foreseeable benefits and risks of the proposed treatment or health care, and has concluded that the proposed health care is in the minor's best interest. Only if these conditions are met shall the minor's consent to health care be valid.

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https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/1st-session/19920702pm-Hansard-v5n13

HANSARD EXCERPTS: VERY LITTLE DEBATE WAS HAD AND THE MLAs WERE DUPED OR LIED TO ABOUT 'COMMON LAW'.

1992 Legislative Session: 1st Session, 35th Parliament
HANSARD

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The printed version remains the official version.

Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

THURSDAY, JULY 2, 1992

Afternoon Sitting

Volume 5, No. 13

…

On section 2.

A. Warnke: I want to thank the member for Okanagan West for not pre-empting me.

One question has been raised. I'd like to add a bit of a preamble, and perhaps the Attorney General could comment on this as well. What we're talking about here is a change in the Infants Act. The term "infant" is used here, which actually can be confusing to the untrained ear. When we think of infants, actually we're talking about human beings that are extremely young. On the surface, in commonsense terms, it's very hard to explain to an infant and have it reach a point where the infant fully understands the "nature, consequences and foreseeable benefits thereof." It's a very interesting way of using the term "infants." I don't know. Somewhere down the line, is it possible that there could be some clarification here?

However, when we take a look at the amendment that's being proposed, I have just one question. Could this possibly mean that someone between the ages of 16 and 19 -- certainly not an infant, but that's in commonsense terms -- will no longer need parental consent for medical procedures?

Hon. C. Gabelmann: To the first point first, I too find the use of the term "infant" in the Infant Act to describe citizens of our society 18 years of age and under a bit unusual. My personal view is that this is not the best use of plain language. I hope some day that we might have a title that actually says what it means.

Hon. G. Clark: That would be novel.

Hon. C. Gabelmann: It might be novel, but it would be long overdue.

In respect of the substantive question, as members know, common law in matters of consent by medical practitioners applies to persons under the age of 15. There are certain situations where parental consent is not required under common law. The common law is clear and specific on that point. The anomaly comes about when that "infant" reaches the age of 16. Through and including age 18, the law has required that consent be required -- clearly an **anomaly** and clearly something that requires redressing.

The member hasn't asked why we have gone this way to redress rather than the other way. The answer, very simply, is a social answer as opposed to a legal answer. It is that youngsters of this age who may require medical intervention should not be **spooked** into not securing that medical intervention by a fear of, in some cases, having to receive parental approval. Members can use their imagination, and they won't need much of it, to imagine all kinds of situations where a youngster -- say a 17-year-old --

requires some support, assistance or therapy by a medical practitioner and would not receive that therapy or response should parental support or approval be required.

Some members in our society find that a difficult concept to deal with. Some people -- hopefully it's an increasing minority -- feel that a child, right through until the age of 18, should and must have parental support for whatever. I think we're beyond that in our society now. All of us know youngsters much younger than the age of 18 who no longer have a relationship with their parents, who no longer live at home and, in many cases, don't even talk to their parents any longer, as a result of the way society has evolved -- rightly or wrongly. All of us feel uncomfortable about the fact that that has happened, but it's a reality. For a variety of reasons, we think it's important to ensure that the medical practitioner and an individual of this age who, in the view of the medical practitioner, is able to make an informed decision, be able to make that decision together.

[Page 3371]

C. Serwa: Does subsection (3) create a situation where the health care provider could be held **liable** for decisions made respecting health care for the patient? There was some concern with respect to that, and I'd like clarification on it. Clearly the parents' approval is not sought. The individuals are in their minority. What is the situation there?

Hon. C. Gabelmann: The medical practitioner must do what's said in (3)(b), and that is make reasonable efforts to determine "that the health care is in the infant's best interests." If they do that, they have met the test that this change would implement.

C. Serwa: What the minister is saying to me is that the health provider -- providing that they have met the test under subsection (3) by consulting with some other practitioner and getting support -- **would not be held liable** if subsequent investigation proved that perhaps the information was not quite as correct as it could have been. As long as they've met the test, they assume no other liability.

Hon. C. Gabelmann: As long as they follow this test, there would be **no liability.**

C. Serwa: In the event of blood transfusions, for example, where some religious groups do not believe in that, if it's been indicated to the infant by the medical practitioner that this would be the appropriate, perhaps live-saving, measure to take, is there any **subsequent liability of** the medical health practitioner, knowing they may be in obvious contradiction to the wishes of the parents?

Hon. C. Gabelmann: Not at all. In that instance, if the decision was made between the doctor and the person under the age of 18, and clearly the person under the age of 18 knew what was happening, knew the consequences of what would happen with the intervention, then there would be no liability and the parents would have no comeback on the practitioner.

Sections 2 to 4 inclusive approved.

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HANSARD EXCERPTS 1993: THE OPPOSITION WAS TRICKED BY THE WAY THE NDP INTRODUCED THE AMENDMENTS TO THE INFANTS ACT.

https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/2nd-session/19930715pm-Hansard-v12n8

1993 Legislative Session: 2nd Session, 35th Parliament HANSARD

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Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

THURSDAY, JULY 15, 1993

Afternoon Sitting

Volume 12, Number 8

Other sections are "Remuneration and expenses of directors and committee members" and "Reporting of remuneration and expenses." It's even redundant; as you go through the bill you'll see that it even repeats itself in places. Partway through the bill they go into a few other things. Then we bring up employee and officer expenses, council members' remuneration and expenses, remuneration for board members. My goodness, what else are we going to tell them? That they can have their meetings between 1 o'clock and 2 o'clock on a certain day? Why don't we let municipalities be responsible to the people who elect them? I have no problem with some provincial legislation, because it has to be there. But when it comes to commonsense, ordinary things that have been going on for decades, all of a sudden a minister has to come forward and table this kind of a bill at this time of the year, when we've already got 70-some pieces of legislation to look at. It's just a waste of time. I think it's in order to slip in a sleeper. **We got caught last year at the very end of the session with the Infants Act. It was just a -- what do you call it? -- housekeeping bill, one of those bills that they're always talking about, and we missed part of it. That's what I think is happening here.**

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HANSARD EXCERPTS 1993: AGAIN THE FACT THAT THE AMENDMENT WAS 'SNEAKED' IN AT THE END OF PREVIOUS SESSION IS MENTIONED.

https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/2nd-session/19930728pm-Hansard-v12n21

1993 Legislative Session: 2nd Session, 35th Parliament HANSARD

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Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

WEDNESDAY, JULY 28, 1993

Afternoon Sitting

Volume 12, Number 21

K. Jones: I think we've had an extensive debate on this issue. We've tried to get the government to be forthright on it. It's shameful that the government should bring this in at this late hour of the day....

The Chair: Order, hon. member. The Chair has directed on the debate on section 18. It has been explained by the minister that this section deals with Starship Bingo. Standing orders require that debate in committee be relevant to section 18. So could we have questions that are relevant, please.

K. Jones: Hon. Chair, I'm dealing strictly with section 18. I'm not dealing with Starship Bingo; I'm dealing with the issue of the wording of this section of the amendment that's being put forward. The issue is that operations of the Lottery Corporation and electronic bingo operations are being extended throughout this province, and it is being put through on a sleeper basis in the last bill of the legislative session in order to try to **sneak it through, much like the Infants Act was sneaked through last year**. I think it is really the intention of this government to be sleazy once again in the presentation of legislation.

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HANSARD EXCERPTS 1993: AGAIN THE NDP'S MISLEADING WAY OF GETTING THE AMENDMENT IS RAISED and THE LIE THAT WAS TOLD ABOUT THE CHARTER AND COMMON LAW IS ADDRESSED

THE ATTORNEY GENERAL DECLINES TO TAKE RESPONSIBILITY FOR INTRODUCING THE AMENDMENT - BLAMES MIN OF HEALTH.

THE AMENDMENT IS CONTROVERSIAL.

THE INCONSISTENCY IN THINKING ABOUT AGES BETWEEN INFANTS ACT AND YOUNG OFFENDERS ACT IS RAISED.

https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/2nd-session/19930518am-Hansard-v10n4#6369

C. Serwa: I have a series of questions on a number of different issues, so it will be a little bit random and spread all over the map. Hopefully, we'll be able to wind up the Attorney General's estimates sometime today, perhaps this morning. That brings a smile to the Attorney General, which is nice on a bright day.

Last year the Attorney General introduced the Infants Act**. It has raised quite a storm of controversy**. I recognize it relates more to the Ministry of Health; nevertheless the Attorney General introduced the Infants Act through his miscellaneous statutes act. At the time that act was introduced, the Attorney General indicated that we were treating two classes of infants in different ways and that that wouldn't stand the test of the Canadian Charter of Rights and Freedoms. As a direct result of that, the Infants Act was brought in so that we treated all infants in a similar manner, as under the British common law system, where in law, unless something is specifically prohibited, then it is in fact allowed -- by default, I suppose.

I think that I'm correct in my statements so far. The question I want to ask the Attorney General is this: is his concern with respect to treating different classes of infants as consistent today as it was when he introduced the Infants Act?

Hon. C. Gabelmann: I don't know the answer to that question. I'll wait for the second question and see what the setup is before I get into that one.

In respect of the Infants Act, I'm sure members know that it's the responsibility of the Ministry of Health. I only shepherded the legislation through as part of the miscellaneous statutes bill. If the member has a more direct question in terms of some other issue that is in my responsibility, I'd be quite happy to try to answer.

C. Serwa: The question relates to the way the Infants Act amendment was introduced, and the statement that we were treating two classes of infants in different manners, which was inappropriate. Does the Attorney General still consider it inappropriate to treat infants in two separate manners under legislation?

Hon. C. Gabelmann: Yes, I do think it's inappropriate.

C. Serwa: On that basis, then, we'll leave the Infants Act and go on to the Young Offenders Act. Here we were treating infants under criminal law in two different ways. If we had trouble justifying, under the statutes of the Canadian Charter of Rights and Freedoms, that differential for medical health purposes, why then do we have what appears to be a dual standard with the Young Offenders Act? This is another area of substantial and significant concern. I recognize that it's a federal issue, nevertheless the Attorney General is the chief lawmaker in the province, and I would like him to respond to that question.

Hon. C. Gabelmann: I've got two answers to that question. The first is that the member should run in the federal election this fall and ask Mr. Blais -- if he is returned as Justice minister -- why the federal Parliament has chosen ages 12 to 17 inclusive.

Secondly, the Charter allows for -- I can't pull the precise wording out of my head -- reasonable.... Let me back up and do it in my own language. The Charter essentially doesn't allow for discrimination based on age, unless there is a reasonable cause for making that kind of limitation. The argument on the Young Offenders Act would be that it is reasonable to pick the age 12 as a starting point for inclusion under that legislation. That is presumably the way the Charter would apply in that case.

C. Serwa: For me as a layperson, it always seems difficult when we can pick and choose areas of concern and differential. It would appear to me that in the tack taken under the Infants Act, which raised this storm of controversy out there in spite of its intentions, some form of consistency should be applied so that we treat all infants similarly under legislation throughout Canada and the province of British Columbia. That was one of the areas I wasn't too happy with or confident that we were being consistent in the legislative process.

Hon. C. Gabelmann: Let me take a moment philosophically on this point. In respect of medical treatment provided for minors, the rule in place now is essentially that if the minor, together with the health professional, is able to make an informed decision, then the procedure can go ahead. The decision is clearly going to be, in almost all instances, better informed at ages 16, 17 and 18, than it is at age three, four and five -- to pick some ages. The rights that accrue to the minor increase with age as the minor moves towards adulthood and an ability to make a reasoned and informed judgment in concert. So that's how the regime of rights applies under that legislation.

As far as the Young Offenders Act is concerned, because we're dealing with a very different kind of issue -- with violations of the Criminal Code -- there was an arbitrary decision to pick age 12. Parliament made that choice, and within the Charter of Rights that is an allowable option for parliament. It can be challenged, and theoretically it could be overthrown. My suspicion is that the courts would say that it's reasonable to pick an arbitrary age. I'm just thinking out loud here, but if a 14-year-old didn't know whether or

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not they were covered by the Young Offenders Act, it would be problematic. At least in a doctor's office you can have a discussion and it's a very different situation than if you are committing a criminal offence and you don't know whether you are covered by the legislation or not. Clearly you have to have an arbitrary age in respect of criminal law. I may not have expressed that very well, but I think it's an obvious point.

C. Serwa: Thank you very much for the explanation. I won't continue on that tack. It seems to me that if we consider the infants capable of accepting objective information and making an informed, competent decision, then they should also be responsible for their actions. At the present time it appears that they are not, and I don't think that the public is happy about that.

HANSARD EXCERPTS 1993: AGAIN - THE AMENDMENT WAS SNEAKED IN

https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/2nd-session/19930401am-Hansard-v8n12#4945

THURSDAY, APRIL 1, 1993

Morning Sitting

[Page 4935]

-This particular section 56.01 of this particular act is exactly the same as the introduction of the Infants Act, which was introduced in the last section of a miscellaneous statutes bill. It's a red herring that bears no resemblance and has no relevance to the bill that we're debating in this House.