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Wednesday 9 December 2015

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des débats
(Hansard)**

Mercredi 9 décembre 2015

**Standing Committee on
Justice Policy**

Employment and Labour Statute
Law Amendment Act, 2015

**Comité permanent
de la justice**

Loi de 2015 modifiant des lois
en ce qui concerne l'emploi
et les relations de travail

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 9 December 2015

Mercredi 9 décembre 2015

The committee met at 1300 in committee room 1.

**EMPLOYMENT AND LABOUR STATUTE
LAW AMENDMENT ACT, 2015
LOI DE 2015 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'EMPLOI
ET LES RELATIONS DE TRAVAIL**

Consideration of the following bill:

Bill 109, An Act to amend various statutes with respect to employment and labour / Projet de loi 109, Loi modifiant diverses lois en ce qui concerne l'emploi et les relations de travail.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Welcome back to clause-by-clause consideration of Bill 109. We have the first 15 minutes in order to complete work on schedule 3. We're still at NDP motion 2. I understand we'll be voting on that immediately. I do inform you that at 1:15, the time allocation will take precedence and there are some other parameters that will follow. I will announce those at 1:15.

At this time, we have NDP motion 2 before the floor. Debate has been completed. As you know, we are in post-recess, post-adjournment so we will now proceed to the vote on NDP motion 2, without discussion.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): With a recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 2 to have fallen.

We now move to PC motion 3. I'll invite Mr. Hillier to please introduce PC motion 3.

Interjections.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Arnott?

Mr. Ted Arnott: Thank you, Mr. Chair. I understand I'm duly substituted in and I'm standing to move this motion.

The Chair (Mr. Shafiq Qaadri): Yes, so you have before you, Mr. Arnott, PC motion 3.

Mr. Ted Arnott: I move that section 22.1 of the Workplace Safety and Insurance Act, 1997, as set out in section 1 of schedule 3 to the bill, be amended by adding the following subsection:

"Same

"(2.1) For the purposes of subsection (1), the following actions shall not be considered to be prohibited actions:

"1. Any reasonable action by the employer to verify or challenge a worker's claim for benefits under section 22.

"2. Any reasonable action by the employer to accommodate a worker's injury in the workplace.

"3. Any reasonable work-hardening program or other action by the employer to,

"i. facilitate a worker's early and safe return to work, or

"ii. facilitate a worker's early and safe return to his or her pre-injury role and responsibilities.

"4. Any reasonable performance management, corrective action or other action by the employer to correct or improve a worker's job performance.

"5. Investigations related to any appearance, allegation or reasonable suspicion of worker misconduct or of a contravention of the laws of Ontario or Canada."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. That's PC motion 3. You have the floor for any discussion—above the cabbies here.

Mr. Ted Arnott: There's still a 6, I think.

The Chair (Mr. Shafiq Qaadri): Pardon me? Did you not read 6? Oh, sorry. Right, go ahead: 6 on page 2.

Mr. Ted Arnott: "6. Dismissal, discipline, suspension or other action by the employer if such action is related to worker misconduct or a contravention of the laws of Ontario or Canada."

The Chair (Mr. Shafiq Qaadri): Thank you. Go ahead. You have the floor.

Mr. Ted Arnott: Mr. Hillier wants to speak to the motion.

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

Mr. Randy Hillier: Thank you, Chair. Listen, with the time allocation motion that we have in front of this committee and the actions of the government to frustrate and purposely prevent discussion and debate on motions and on this bill, it really becomes moot to discuss these amendments.

I will say this: There are a number of amendments related to the WSIB section. We're not going to be able to even introduce them, let alone debate them in an intelligent fashion under the time allocation motion.

So I'll put this on the record as I've done on this bill during the debates. First off, there's a fivefold increase being legislated in this schedule 3. The offence moves from \$100,000 to \$500,000 under this act. In addition, you have included a clause for an administrative monetary penalty to also be included in this WSIB schedule. I'm not sure, and I don't want to presuppose, that the Liberal members of this committee understand what the difference is between a provincial offence and an administrative monetary penalty.

With this one, you don't identify what the penalty is. We have no idea. It could be \$10; it could be \$10 million. It will be left up to regulations. Somebody else will decide what the penalty shall be. Right?

But the problem with an administrative monetary penalty is there is no defence against it, unlike the provincial offence, where somebody can challenge that in a court of law and put forward a defence against the Provincial Offences Act.

I would caution the Liberal members to actually understand fully what is proposed under schedule 3. We're not going to have the time to discuss it. We're not going to have the time to debate it. I think when you look at this time allocation motion that's in front of this committee, it is a purposeful attempt to frustrate the legislative process, to obstruct the democratic process, and prevent members of this Legislative Assembly from advocating for their constituents and discussing and debating the merits or consequences of this legislation.

That being said, there is absolutely no value—I find no value—in spending any more time in this committee today under this time allocation process, and I will be vacating my chair.

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

Let me pass it over to Ms. Indira Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Chair. I want to start off just by making sure that we clarify something. I understand that when MPP Arnott read the section, he referred to it as—

Interruption.

The Chair (Mr. Shafiq Qadri): Ms. Naidoo-Harris? Sorry, but because of the cab symphony going on, please move a little closer to the mike.

Ms. Indira Naidoo-Harris: Sure. I'm going to move this over.

I just wanted to start out by clarifying things. He referred to it as section 1 of schedule 2. What we're referring to here, just for the record, is section 1 of schedule 3. I'm just making sure that we have it correctly mentioned in the record in Hansard.

Mr. Ted Arnott: Did I say schedule 2?

Ms. Indira Naidoo-Harris: Yes, you did.

Mr. Ted Arnott: Oh, sorry.

Ms. Indira Naidoo-Harris: I'm going to recommend voting against this motion, basically because, in my opinion, this particular proposal is adding a section that I feel and that we feel really confuses the bill. What it does is set out a list of things that will not be seen as being prohibited, and the list that is set out here presupposes that a claim has been filed, for example, and that winds up challenging a claim of benefit.

Let me just give you a little bit of an example. The way this amendment sets out how to do things is to move forward with the idea that once a claim is filed, then action will be taken. However, it does not include the possibility that if an employer suggests—or an employee is asked by an employer to suggest—to someone that they not file a claim and maybe even give them some kind of motivation not to do it, that won't be captured with this particular amendment. So I feel that it really gets into some very dangerous and confusing territory. We feel that this is a motion that we will be voting against.

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

Mr. Ted Arnott: Well, I want to thank Ms. Naidoo-Harris for her comments, obviously, and I'm disappointed that the government is not prepared to indicate an interest in supporting this amendment.

This isn't something that we just came up with by ourselves. It was recommended by the Canadian Manufacturers and Exporters, which is one of the most important trade organizations in the whole country, representing manufacturing concerns all across Canada. They have been in existence for more than 100 years. I think all of us know the importance of manufacturing to our economy, and I would submit that we need to listen to them.

Of course, they are quite concerned that section 22.1(2) is too broad and it could lead to administrative obstacles for employers.

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Unfortunately, Mr. Hillier has taken leave of the committee, but I would have to add that I'm totally dissatisfied with this process. This time allocation motion was just tabled late Monday afternoon after this committee had basically one day to deal with clause-by-clause. It is true that we were having significant discussion on some of the amendments and the various clauses, but to suggest that we were unduly delaying the bill, I submit, is a false statement. It was said in the House and I would suggest it is a false statement. We are doing our job, as opposition, by debating this bill.

Of course, the time allocation motion tabled in the House Monday afternoon called for debate Tuesday morning. Here we are, Wednesday afternoon; we've got one hour at best. Actually, at 1:15 I guess we start going through it one by one without debate and then, apparently, it's going to be called for third reading this afternoon. This is not the way to debate legislation.

I know that Christmas is coming and I'm as excited about Christmas as anybody, but I would ask the

members of the government side in particular to take this back to their caucus. If they think about this and reflect upon it, I'm sure that they would agree that there has to be a better way to debate and discuss legislation before we ram it through in this fashion.

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

Ms. Indira Naidoo-Harris: I think it's important that when we're talking about this that we stick to section 22.1 of Bill 109 and what we're discussing here at hand. I understand what the member opposite had to say about the manufacturers and their interest in weighing in on all of this.

Whenever you're dealing with legislation, Chair, it becomes a balance: making sure that you're balancing the rights and needs of everyone who is being affected by the piece of legislation at hand. Right now, we're looking at balancing the rights of workers and employers.

We really feel that Bill 109 seeks to prohibit an employer from discouraging or influencing one of their employees from filing a claim to the WSIB. As the bill stands, we feel the language is clear and that it sets out certain kinds of actions that are considered to be claim suppression.

We feel that this amendment actually confuses things and, in essence, perhaps even allows for some type of claim suppression to happen before a claim is filed. That's key. We have to make sure that claim suppression does not occur, whether someone tries to influence someone by suggesting they not file the claim—so that's why I think it's important for us to vote against this amendment.

The Chair (Mr. Shafiq Qaadri): Ms. French?

Ms. Jennifer K. French: How many more minutes do I have left of the time allocation?

The Chair (Mr. Shafiq Qaadri): Two.

Ms. Jennifer K. French: Okay, then I obviously can't wait to get to some of the further amendments, so I'd like to be on record as saying that, of course, I'm immensely disappointed that we don't have the opportunity to discuss each of these amendments in schedule 3 because this is an important section.

My Bill 98 had incorporated two parts. This Bill 109 has taken half of that. I was looking forward to debating and discussing and doing my best to make the case to protect not only the widows' pensions but also workers' benefits. The burden should not be put on surviving spouses, but that is an amendment we won't have a chance to discuss.

We've already hashed it out about employers or employer—the word isn't “designate,” but the person acting on behalf of the employer to broaden that to best protect those whom the WSIA seeks to protect, and that is the workers.

Unfortunately, there are a number of weighty, important and meaty amendments coming up that we're just going to have to vote on because of this time allocation motion. As my colleague Mr. Arnott has said, this is not the best way to debate. In fact, I would say this isn't any kind of debate at all.

I'd like to be on record as saying that this is shameful. We're talking about occupational diseases and we're talking about supporting workers and their families and their benefits, but we don't have time for that. We don't have time to weigh in. It's always my pleasure to be here representing Oshawa and those whose voices I'm putting forward, but it is not always a pleasure to sit across from the government, especially when they're just bullying things through as we see today.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

I would just officially announce to our committee members that the time allocation process parameters are now in force, which means, just for the record, that there will be no recesses called and we will proceed immediately to the votes on each of the various motions. You are welcome to request recorded votes should you wish. I will not be reading the entire motion, but, for example, I'll be saying “PC motion 3” and then the bold text at the heading. That's mostly for orientation purposes.

We'll now proceed to the vote on PC motion 3. As I say, whether it's a voice vote or a recorded vote, that is your choice.

Mr. Ted Arnott: Recorded vote, Mr. Chair.

Ayes

Arnott.

Nays

Berardinetti, French, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): PC motion 3 falls.

We now go to NDP motion 4, with reference to schedule 3, section 1, subsection 22.1(3) of the Workplace Safety and Insurance Act, 1997. I'm duly informed that this is out of order because of non-passage of earlier amendments, so it's officially withdrawn.

We're now at PC motion 5, with reference to section 1 of schedule 3. We'll proceed immediately to the vote.

Mr. Ted Arnott: Recorded vote, Mr. Chair.

Ayes

Arnott.

Nays

Berardinetti, French, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): PC motion 5 falls.

Shall schedule 3, section 1, carry? Carried.

We'll now proceed to schedule 3: NDP motion 6. I am also informed that this is beyond the scope of the bill and therefore out of order. It is officially withdrawn.

We'll now proceed to NDP motion 7. This is with reference to schedule 3, section 2, subsection 48.1(2) of the Workplace Safety and Insurance Act, 1997. We'll proceed immediately to the vote.

Ms. Jennifer K. French: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 7 falls. We'll proceed now to PC motion 8. This is with reference to section 2 of schedule 3. We'll proceed now to the vote.

Mr. Ted Arnott: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare PC motion 8 to have fallen.

We'll proceed now to NDP motion 9, with reference to schedule 3, section 2, subsection 48.1(3.1) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote on NDP motion 9.

Ms. Jennifer K. French: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 9 falls. We'll proceed to NDP motion 10, with reference to schedule 3, section 2, subsection 48.1(3.2) of the Workplace Safety and Insurance Act, 1997.

Ms. Jennifer K. French: Recorded vote.

Ayes

French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): NDP motion 10 falls.

We'll proceed now to NDP motion 11, with reference to schedule 3, section 2, subsection 48.1(4.1) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote.

Ms. Jennifer K. French: Recorded vote.

Ayes

Arnott, French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 11 to have fallen.

We now proceed to NDP motion 12, which is in reference to schedule 3, section 2, subsection 48.1(4.2) of the Workplace Safety and Insurance Act, 1997. We'll proceed now to the vote, which is recorded.

Ayes

French.

Nays

Berardinetti, Lalonde, Martins, Naidoo-Harris, Wong.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 12 to have fallen.

Shall schedule 3, section 2, carry? Carried.

We now proceed to PC motion 13, which I am informed is out of order—beyond the scope of the bill—and is officially withdrawn from consideration.

We will now proceed to NDP motion 14, which I also inform my colleagues was contingent on an earlier amendment passing—

Interjection.

The Chair (Mr. Shafiq Qaadri): —which was contingent on an earlier NDP motion passing, which it did not; therefore, it is also now out of order.

NDP motion 15 is also out of order, having also been contingent on earlier motions being passed, and therefore it is officially withdrawn.

We proceed to the consideration of the section. Shall schedule 3, section 3, carry? Carried.

We now proceed to NDP motion 16 which is in a similar situation—out of order—as foregoing amendments. Dependent passages have not been passed; therefore, NDP motion 16 is also now withdrawn.

Shall schedule 3, section 4, carry? Carried.

The next three sections of schedule 3, sections 5, 6, 7: We have not so far received any amendments or motions. May I consider them as a block? If that's the will of the committee we'll consider them as a block. Shall schedule 3, sections 5, 6 and 7, carry? Carried.

Shall schedule 3 carry? Carried.

Okay. We're now reorienting and going back to the very first section of the bill, for which we have still not received any amendments or motions. Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 109, as amended, carry?

Interjection.

The Chair (Mr. Shafiq Qadri): Shall Bill 109 carry? Carried.

Shall I report the bill to the House? Carried.

Thank you, colleagues. If there are no further comments before the floor, committee is adjourned.

The committee adjourned at 1323.

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