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Standing Committee on Justice Policy

Employment and Labour Statute Law Amendment Act, 2015

Chair: Shafiq Qaadri
Clerk: Tonia Grannum

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Comité permanent de la justice

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

Président : Shafiq Qaadri
Greffière : Tonia Grannum

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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 3 December 2015

Jeudi 3 décembre 2015

The committee met at 0901 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 to the Standing Committee on Justice Policy. As you know, we're here to do clause-by-clause consideration of Bill 109, An Act to amend various statutes with respect to employment and labour.

We have a dozen or so motions, but before we do that we'll move to the consideration of the schedules that are individually cited here, so not just section 1, 2 or 3, but to schedule 1 and, in that, of section 1.

I have received no motions or amendments to date, so may I consider it the will of the committee that schedule 1, section 1, carry? Carried.

Similarly, for schedule 1, section 2: no amendments or motions received to date. Schedule 1, section 2, carried? Carried.

Similarly, no amendments or motions received for schedule 1, section 3: Carried? Carried.

Okay, similarly, for schedule 1, section 4: no amendments or motions received to date. May I assume that it's carried? Carried.

I'll now call your attention to schedule 1, section 5. We have received PC motion 1 with regard to this particular area. I would invite Mr. Hillier to present PC motion 1.

Mr. Randy Hillier: Ted, do you want to speak to your amendment?

The Chair (Mr. Shafiq Qaadri): Mr. Arnott.

Mr. Ted Arnott: I'm sorry. I was a few minutes late.

The Chair (Mr. Shafiq Qaadri): No problem. Just to recap for you, we've already carried schedule 1, sections 1, 2, 3 and 4, for which we received no amendments or motions. We're now on PC motion 1, which concerns schedule 1, section 5. The floor is yours, Mr. Arnott.

Mr. Ted Arnott: I move that—

The Clerk of the Committee (Ms. Tonia Grannum): Sorry, you don't have a sub slip.

The Chair (Mr. Shafiq Qaadri): You need to be validated.

The Clerk of the Committee (Ms. Tonia Grannum): You can move the motion, Mr. Hillier. Sorry.

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

Mr. Randy Hillier: I move that subsection 52.2(2) of the Fire Protection and Prevention Act, 1997, as set out in section 5 of schedule 1 to the bill, be amended by striking out "or" at the end of clause (f), adding "or" at the end of clause (g) and adding the following clause:

"(h) serves as a volunteer firefighter for a fire department that is not operated by the employer;"

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor is yours for comments, should you wish it. Otherwise we'll pass it to colleagues.

Mr. Randy Hillier: I'm going to allow Ted to come back in here in a minute. My understanding of this amendment is that it would recognize and improve the employment certainty for volunteer firefighters who also work for professional firefighting associations.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Are there any further comments, and I'll wait for Mr. Arnott to return before we cast the vote. Ms. Forster.

Ms. Cindy Forster: My understanding was, when we had the deputation from the Ontario Professional Fire Fighters Association, that this really wasn't an issue. The issue of double-hatter and the way that it was actually presented in the government bill wasn't an issue, so I don't really understand why we need to actually add this new clause here, but perhaps Mr. Arnott can explain that to us when he returns.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. The floor is open. Mr. Colle.

Mr. Mike Colle: As we heard before, the critical thing in this bill is that it does finally ensure that a union cannot unreasonably deprive someone of union membership in order to cause them to be denied employment as a firefighter. This has gone on for many, many years. Finally, we've got that in legislation. This motion basically does not really do anything to change that, but what it does do is it changes the language here that could be problematic. Really, the rights as enshrined already in the legislation give that protection to the so-called double-hatters from being deprived of union membership, which was happening. We do not support this motion.

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

Mr. Arnott, if you'd care to speak on this amendment?

Interjection.

Mr. Ted Arnott: I apologize.

The Chair (Mr. Shafiq Qaadri): No, that's fine.

Mr. Ted Arnott: I'm trying to do 14 things this morning at the same time.

Again, I understand my colleague, Mr. Hillier, has explained the rationale for the amendment, but I'd just like to reiterate: There are 19,000 volunteer firefighters serving in 93% of the province's fire departments today. Over the past 15 years, the union that represents full-time firefighters has, from time to time, in some cases, threatened to expel from membership some two-hatters who they identified as volunteering in their home communities or serving as part-time firefighters in their home communities, which in turn, in some cases, has meant the prospect of losing their full-time employment.

This is something I raised in the Legislature in 2002 by way of a private member's bill, which had a great deal of controversy associated with it, I admit, but at the same time I was pushing for the right of two-hatter firefighters to continue to serve as volunteers in their home communities.

I know the government, with this particular Bill 109, has made some appropriate gesture towards legislative protection for these individuals. This suggested amendment was brought by the Christian Labour Association of Canada, and we indicated to them that we would bring forward their suggestion for an amendment to committee, and here it is. I support it and I would encourage other members of the committee to support it as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. If there are no further comments on PC motion 1, we'll proceed to the vote.

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

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Arnott, Hillier.

Nays

Colle, Delaney, Forster, Hoggarth, Martins, Naidoo-Harris.

The Chair (Mr. Shafiq Qaadri): PC motion 1 falls.

Shall section 5 of schedule 1 carry? Carried.

Also, if it's the will of the committee, I have a number of sections still within schedule 1. They are sections 6, 7, 8, 9 and 10, inclusive, for which so far no amendments or motions have been received. May I take it as the will of the committee that all of those so-named sections carry?

0910

Mr. Bob Delaney: Clarification, Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Bob Delaney: Is there a section 10?

The Chair (Mr. Shafiq Qaadri): There is a section 10 of schedule 1.

So just to be clear, what I'm currently asking for is for the parts of schedule 1—which are sections 6, 7, 8, 9 and 10—for which we received no motions or amendments to carry. Is that the will of the committee? Carried.

Shall schedule 1, therefore, carry? Carried.

We're still on schedules; we haven't graduated to sections. Of schedule 2, shall section 1 carry? We've received no motions or amendments so far. Carried.

Similarly, no motions or amendments received for section 2 of schedule 2: Shall it carry? Carried.

We have received a number of amendments for schedule 3 to which we will now proceed.

Mr. Ted Arnott: We didn't vote on schedule 2 in its entirety.

The Chair (Mr. Shafiq Qaadri): I do thank you, Mr. Arnott. Even with your late arrival, you're helping out in procedure, so thank you.

Shall schedule 2 carry?

Mr. Randy Hillier: No, hold on here for a minute. Is this not put in as an amendment? No, it isn't. Okay. I'd like to have a discussion on schedule 2.

The Chair (Mr. Shafiq Qaadri): Fair enough. The floor is open for schedule 2, although I am just reminded that we have actually voted on it. But go ahead.

Mr. Randy Hillier: Schedule 2 is the only part that really has been significantly controversial and has been raised in debate—in everybody's debate. I think even members of the government party were recognizing that there is some level of concern with schedule 2.

For the record, schedule 2 puts in an arbitrary number of 60% when there is more than one collective bargaining agent representing people in the same workplace. If 60% or more of the people in that workplace are represented by one union and there is an action to merge unions, people are denied a vote. It's totally contrary to everything that we know and understand and want in collective bargaining and with organized labour, where it allows a dominant union to usurp the rights of members in a subordinate union or in a smaller union.

I asked directly in the House why there is a need for this. I've asked often: What is the rationale that the government would suggest that we should take away the democratic rights of representation by up to 40% of the people in a workplace? I've not had any response during the debates on the rationale or the justification for this, and I am of the view that why we've not heard a response to these inquiries is because there is no justification. There certainly is no lawful purpose to be bringing in this arbitrary number. So I put that on the floor.

I'd like to hear from the committee members of the government why they think up to 40% of the people in a workplace should be deprived and denied their ability to choose who their bargaining agent ought to be.

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

Ms. Forster, I notice that the NDP also has, I think, precisely the same notice, so if you'd like to comment, you're welcome to as well. But the floor is open.

Ms. Forster and then Mr. Arnott.

Ms. Cindy Forster: Actually, Mr. Arnott wanted to go first.

The Chair (Mr. Shafiq Qaadri): Or the reverse—or over there. Whoever would like to comment, the floor is now open.

Mr. Ted Arnott: Well, if the government is going to respond, I'll give them the opportunity. If they choose not to respond to Mr. Hillier's question, I appreciate the opportunity, Mr. Speaker, to put some comments on the record as well.

I received a copy of a letter from CUPE which was addressed to the Premier and the Minister of Labour on November 17 on this important issue. They make valid points. It was sent by Fred Hahn and Michael Hurley, and I think these points need to be put on the record and need to be considered by the government members before we take this vote:

"Dear Premier Wynne and Minister Flynn,

"We are writing today to ask you to withdraw schedule 2 of Bill 109, An Act to amend various statutes with respect to employment and labour.

"Bill 109, as you know, contains three schedules, two of which CUPE could be prepared to support. Schedule 2 of the bill, Public Sector Labour Relations Transition Act, 1997 (PSLRTA), however, is entirely unacceptable to us, as it should be to you, because it takes away the right of workers to vote to choose which, if any, trade union they wish to belong to and be represented by in the event of workplace mergers.

"Before setting out our reasons why these proposed changes should be withdrawn and Ontario workers allowed to continue to exercise the democratic rights now available to them under the existing statute, allow us to provide some background.

"The Canadian Union of Public Employees, CUPE, is the largest union in the province of Ontario with more than 250,000 members. CUPE members are employed in five different sectors, at least two of which, health care and social services, routinely face merger-driven representation votes which are mandatory under the present terms of PSLRTA.

"Over the years, CUPE has won and lost in PSLRTA-required representation votes. On occasion we have won votes where our members made up only a minority of voters and on other occasions we have lost votes where we were in the majority. In every case, CUPE members have accepted the results precisely because they were democratically arrived at through decisions made solely by the workers themselves and without outside interference by employers or government.

"In 2013 the office of the Minister of Labour reached out to CUPE and other unions to consult on the very kind of changes that are today found in schedule 2 of Bill 109. The three largest unions affected (CUPE, OPSEU and ONA) as well as the province's federation of labour, representing 1.3 million unionized workers, were unequivocally opposed to making changes in PSLRTA that would take away the right to vote.

"Following that consultation, CUPE was contacted directly by the Minister of Labour's office and advised that the government would not be proceeding with these changes.

"Relying on that undertaking, CUPE decided not to make any further representations to the provincial government on these matters and considered this 'case closed.' That understanding continued up until April 23, 2015, when, deep within the government's budget papers released in lock-up that afternoon, we discovered that government had reversed itself and was again proposing to amend PSLRTA to remove guaranteed representation votes in the case of workplace mergers.

"Starting that very day, CUPE (again) made clear to your government our unshakable opposition to the removal of workers' right to vote in the case of workplace mergers.

"Premier, as you and your Minister of Labour are well aware, a core premise of Ontario's successful and long-tested industrial labour relations system is that a trade union seeking to bargain on behalf of a group of workers must be freely chosen by them. This is such an important aspect of our system of labour relations in Ontario that it is spelled out in the 'Purpose' section of both the Labour Relations Act (OLRA) and of the Public Sector Labour Relations Transition Act (PSLRTA).

"The Labour Relations Act, 1995, section 3, states in part:

"'Purposes

"'The following are the purposes of the act:

"'1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.'

"The Ontario Public Sector Labour Relations Transition Act, 1997 (PSLRTA) states, in part:

"'Purposes

"'The following are the purposes of the act:

"'3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.'

"Bill 109, as it stands now, would amend PSLRTA to remove mandatory representation votes and as such will lead to workplaces in which the union bargaining on behalf of a group of workers is not one freely chosen by them.

"It is CUPE's strongly held contention that to remove workers' right to vote, as your legislation would do, would not only contradict the 'Purpose' section of the Ontario Labour Relations Act and the Public Sector Labour Relations Transition Act, it will violate section 2(d) of Canada's Charter of Rights and Freedoms.

0920

"To date in 2015, the Supreme Court of Canada has released three decisions defining the scope of constitutional protection for workers' rights under section 2(d) of the charter.

"These three decisions, which have been referred to as the 'new labour trilogy,' are Saskatchewan Federation of Labour v. Saskatchewan, Mounted Police Association of Ontario v. Canada and Meredith v. Canada.

"The jurisprudence now unequivocally establishes that freedom of association under section 2(d) of the charter in the labour context not only protects the right of employees to establish, belong to and maintain a trade union; it recognises and protects their right to join a trade union of their choosing that is independent from management.

"Premier, this is not only an issue of fidelity to the statutes and to the charter; there is a threat to practical, day-to-day functioning of employer-employee relationships in Ontario workplaces.

"Whenever two or more workplaces merge and workers previously represented by different bargaining agents are required to be represented by a single bargaining agent, there is an inherent challenge to the perceived legitimacy of the newly assigned bargaining agent as it will almost inevitably be the one not preferred by at least some of the workers affected.

"The genius of PSLRTA is that in these situations it ensures the legitimacy of the new single bargaining agent by requiring that the workers concerned take ownership of the choice of representative by making it their choice. If Ontario removes the right to choose, as Bill 109 would do, it will be less likely for workers to view as legitimate a union they did not choose but which was imposed upon them. And it will lead to workers becoming union members and being required to pay union dues without having had a chance to express their own individual preference for that outcome.

"Bill 109's proposed 'threshold' model rests on the premise that if one group of affected employees represented by the same bargaining agent constitutes 60% or more of the total workforce affected, then the outcome of any representation vote would be a foregone conclusion and therefore not necessary.

"This presumption is flawed, first, because it is at odds with the facts of previous votes under PSLRTA and secondly because it fails to recognize that the inherent value of the right to vote is independent of which voting choice one makes.

"Ontario's (and CUPE's) experience with PSLRTA demonstrates that workers do not always vote for the bargaining agent they belonged to prior to the vote. Depending on the circumstances of each unique merger situation and the mood of affected workers, a group of 60% or more could, under the current statute, vote to change their representation.

"Three examples well illustrate that this is exactly what does sometimes happen.

"In October 2014, a vote was held under PSLRTA for employees of Windsor Essex Student Transportation Services. Prior to the vote, CUPE had a clear majority of members but in the actual vote, Unifor was the unanimous choice.

"At Windsor Regional Hospital in November 2013, the voters' list showed 180 CAW members and 30 CUPE members. However, despite having over 85% of the pre-vote members, CAW lost the vote to CUPE 53 to 83. Again in this case, the union with the majority going in was not the preferred choice.

"In May 2013, at Sunnybrook hospital in Toronto, despite there being an overwhelming majority of 1,555 SEIU members to only 148 CUPE members, CUPE almost won the vote. The final count, 536 for SEIU and 455 for CUPE, indicates that more than 300 SEIU members actually voted to be represented by CUPE.

"It is critical to note that in each of these instances, the pre-vote breakdown in no way foreshadowed the final outcome and, if anything, masked what only the vote later revealed as the actual preference of the workers affected. Schedule 2 of Bill 109 is built on the shaky premise that situations like these three will not arise.

"It is also worth considering that taking away mandatory votes creates a potential incentive for employers to structure mergers and acquisitions in a manner that limits the rights of employees to choose the bargaining agent of their choice. An employer might seek to have a collective agreement that is the product of years of negotiations displaced by a newer collective agreement that may not have the same level of benefits, simply by structuring mergers and acquisitions such that the winning collective agreement is always the one with the lowest wages.

"Cost has been raised by some as a possible reason to support the changes proposed in Bill 109. Given that the costs involved in PSLRTA votes are mostly borne by the unions and not the province, it is not clear why this should be an issue, let alone a reason to take away the right of workers to vote to choose their bargaining representative.

"One inference of Bill 109 is that a union in a minority position in a merger will have no expectation of success in a vote and, therefore, prefer to forego the effort and cost. Experience with representation votes in Ontario demonstrates that PSLRTA in its current form does not prevent a union from choosing to decline the opportunity to participate in a given representation vote while still maintaining the right to those votes on an ongoing basis.

"There is no evidence to suggest that timeliness is an issue, or that requiring a vote imposes a problematic delay in the selection of bargaining agent.

"In summary: The three largest union memberships that could be affected by the changes are opposed to it. As recently as 2013, those same unions got assurance from the labour minister's office that their voices had been heard and that the government would not proceed with these changes.

"There is no discernible, or even imaginable, good public policy outcome to be achieved by eliminating mandatory representation votes and taking away workers' right to choose their bargaining representative.

"History tells us that ensuring workers' right to choose their bargaining agents is a necessary component to ensuring successful labour relations in the province of Ontario.

"Core statutes, including PSLRTA, that define this province's labour relations framework require unions to

be the freely designated representatives of the employees involved. Bill 109 effectively repudiates that stipulation.

"Removing the now-mandatory condition that if workers are to become members of a union through a PSLRTA merger, it must be 'of their choosing' is an offence to section 2(d) of the charter and, were Bill 109 to become law with schedule 2 included, CUPE would see little alternative but to initiate a charter challenge.

"Experience with PSLRTA votes demonstrates that in many instances workers vote to choose a bargaining agent other than the one that represented them going into a PSLTRA-sponsored representation vote. Bill 109 is premised on the belief that this does not happen.

"PSLRTA in its current form does not prevent a union from declining to campaign and participate in a given representation vote while maintaining the right to those votes on an ongoing basis.

"Finally, we want to stress that the mandatory voting provisions now existing under PSLRTA, whatever other virtue they may have, serve as a constant incentive for all potentially affected unions to provide quality service to their members, precisely because they know that if they do not, those members could quite likely vote, under PSLRTA, to join another union.

"In light of all of the above, CUPE respectfully asks the government to reconsider its course of action and withdraw schedule 2 of Bill 109.

"We very much appreciate your openness to our concerns and we would be pleased to discuss these matters in person at any time if that could be helpful."

Again, the letter was signed by Fred Hahn, president of CUPE Ontario, and Michael Hurley, president of the Ontario Council of Hospital Unions and first vice-president of CUPE Ontario. The letter was dated November 17, after Bill 109 was referred to committee.

I'm not aware of any response from the government to the specific issues raised in the letter, but I was here in 1997, when PSLTRA was passed by the Legislature, while our party was in government. I believe that I supported that legislation, as a member of the government side. I think it has held up under the test of time, and we see a significant number of labour unions in the province of Ontario who are coming forward to committee to passionately request that it be maintained and that these merger-driven representation votes continue to be allowed.

Any effort on the part of the government to diminish the right of the trade union members to vote to decide themselves which trade union they want to be represented by, I would suggest, is a diminution of workplace democracy in the province of Ontario.

0930

I would ask the government members to respond to these concerns that we've expressed. I'd be happy to table this letter with the Clerk, so that it's available to the other members to consider. We certainly would expect some response from the government members as to why this schedule is going forward as is, unless the government is prepared to withdraw it and support our position, which is that it needs to be withdrawn from the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. The floor is open. Ms. Forster?

Ms. Cindy Forster: Thank you, Chair. I think I'll start by saying that I have no idea why the government is wanting to intervene and amend this PSLRTA bill. It's a bill that has been in place for more than 20 years. It was a little bit unwieldy in the early days; certainly I was involved in a number of PSLRTA votes over the years when I worked for the Ontario Nurses' Association, but those processes got smoothed out after a number of labour board decisions with respect to carving out certain crafts and with respect to how the votes actually were processed in each and every situation.

This government has been reducing budgets, freezing budgets and impacting cuts to hospitals, long-term care and school boards. This legislation under PSLRTA, under the Public Sector Labour Relations Transition Act, applies to municipalities, applies to schools and school boards, and it applies to all health sectors today.

We have a government that's talking about major transformation in the health care sector, so I anticipate that there are perhaps going to be a lot of votes in health care in the coming years. To interfere in a process that's actually working—the minister himself has told a variety of unions who gave deputations to us last week that this is only housekeeping.

The NDP FOIed the Ministry of Health on this issue, and learned that there was only one stakeholder in this whole process. We confirmed at the deputations last week that the only stakeholder was one union, SEIU. When we questioned each of the other deputants that were here that day—CUPE, OPSEU, CLAC, ONA—not one of them had ever been consulted with respect to amending this legislation.

There are 444 municipalities in this province. There are 72 school boards. There are somewhere in the neighbourhood of 90 health systems, maybe a little bit more, 14 CCACs that are under review—perhaps of the government as well—and 500-plus nursing homes. These are hundreds of thousands of employees who, under this transformation and these reductions in budgets over the coming years, could in fact be impacted by this amendment.

The government still has not addressed the issue or answered us with respect to if two workplaces are merging, and one of those workplaces has 60% non-union. Is the government going to take away the rights of the other 40% unionized, or 39.9% unionized workers? They haven't addressed that; they haven't answered that question at all for us. That is, I think, of grave concern to people who want to be in a workplace that is unionized.

We know that schedule 2 proposes to amend section 23 of PSLRTA to eliminate the requirement of a vote in a restructured bargaining unit if at least the prescribed percentage of employees are represented by a single bargaining agent: "The prescribed percentage shall be more than 60%."

Now, we heard from Mr. Arnott and we heard from a variety of unions who presented here that in fact, the union that has the 60% or more doesn't always win. In

fact, there have been a number of votes over the last 20 years where that wasn't the case.

Workers should have the democratic right to actually vote for the union of their choice when they're put in that situation during a merger or an amalgamation. We know that ONA, CUPE, OPSEU, CLAC and a number of the other unions, regardless of whether they're public sector unions or not—I can certainly tell you that when I was at the OFL convention last Friday, there were many private sector unions as well that were opposed to taking away the democratic rights of workers in this province. Affected employees have a democratic right to choose the bargaining agent that will best represent their interests in a restructured employer, and sometimes they're not happy with the union that's representing them. This actually gives them the opportunity to look after what they believe is in their own interests.

The current provisions under the Public Sector Labour Relations Transition Act give effect to democratic rights by conducting runoff votes of all unions with existing members until the successful union demonstrates that they are the choice of more than 50% of the members. I can tell you that there have been votes like that in this province as well, where there were three unions actually representing the same classification of workers and there were runoff votes because during the first ballot one union couldn't secure 51%, or 50% plus 1. Affected employees make a conscious choice in the decision of their original bargaining agent and should have the right to make a choice in the decision of any successor employer.

Through this whole transformation process that we keep hearing about but we don't really get any details on, I think we're going to be seeing more of this. We saw hundreds of hospitals merge and amalgamate into around 100 health care systems in the province. We saw many municipalities across the province during the PC majority governments actually merge into, for example, the city of Toronto, where six boroughs came together to form the city of Toronto. There were PSLRTA votes that happened during that time as well.

There are situations, in fact, where the bargaining agents and unions have agreed not to participate in the vote because they had discussions with their members and they knew that there was no chance that they would be successful in a vote. I'll use the city of Toronto as an example where there were two large bargaining units of about 10,000 members each. There was an inside bargaining unit that was represented by CUPE for all of the inside workers at the city of Toronto in the merger of Scarborough, Etobicoke, East York, York, North York and Toronto, I guess. There was an outside bargaining unit for all of the outside workers. There was Amalgamated Transit. Then ONA actually represented the public health nurses in a number of bargaining units. I believe CUPE, if my memory serves me correctly, may have had one of the public health units at the time.

0940

Because the nurses are such a smaller number and the labour board, at the time, refused to carve them out for the purposes of a vote to have a bargaining unit of just nurses, at the end of the day we chose, after discussions with our members, to actually not be on the ballot to try and represent all of the workers in the city of Toronto. So there are those kinds of voluntary things that happened through this process, as well, after consultation with members of our unions.

Now, the government made a media release on Bill 109, indicating that Bill 109 is designated to "help reduce the potential for disruption and delay for workers," and that eliminating the right of employees to make a choice on a bargaining agent is not consistent with the actual experience under the current provisions. When we FOIed the documents from the Ministry of Health, they in fact clarified in that document that there were actually no problems with PSLRTA, and that PSLRTA was not an issue. So why the government has chosen to take this on—we're still at a loss to try to figure that out.

In reality, votes, when they do occur, do not lead to any disruption or delay. In most instances the process goes smoothly, the campaigns are quick and the votes happen expeditiously once the transition date is established. These campaigns take place in a very short period of time; in seven to 14 days, maximum, the campaign is over and the vote takes place.

Now, in the early days, before the process was kind of worked out, employers were not wanting to let the unions have access to the workplaces, and we were having to have meetings off-site. It was more like an organizing drive when you're going out to organize a new union. But as the decisions went on at the labour board, a process was actually set out, so employers were required to give us the names of all of the employees in the bargaining units that were in question for the merger or the amalgamation. Meetings were actually set up in the workplace, in the cafeteria or in the auditorium, where whatever group of employees was involved could come down and hear from the various unions. At the end of the day, the vote is conducted in the workplace and whoever wins wins at the end of that process.

The experience that ONA, CUPE and OPSEU shared with us in their deputations indicated that any disruption or delay is extremely rare and that there is no justification to eliminate a worker's choice of a bargaining representative. Frankly, I'm surprised. I mean, we've got members sitting on the government side who actually came out of unionized workplaces, who are going to support taking away the democratic rights of workers in the public sector to actually vote for the union of their choice.

I think the other outcome is that at the end of the day, if a union actually loses a vote, it probably makes them more responsive to the remaining members that they have in other locals and bargaining units. For the workers, having the opportunity to vote on the new bargaining agent is an effective mechanism to assist members in accepting the workplace changes that are otherwise imposed upon them.

But I go back to the issue of what if it's 60% non-union. Those workers, in fact, won't have any voice of

any union at the end of the day if that is the government's proposal. I think introducing an arbitrary cut-off percentage, resulting in no mandatory vote, would result in a kind of gerrymander of the bargaining unit, and expensive litigation at the same time.

All unions with representational rights within pre-existing bargaining units automatically get on the ballot, subject to the run-off votes where necessary. Most of the balloting and voting issues have not resulted in litigation. Clearly, at the end of the day, in some cases there have been some questions around who's included in the bargaining unit or who's excluded from the bargaining, but that generally gets worked out on the day of the vote or the day after the vote. It has not been a huge issue. Particularly when the percentages are close to the cut-off, expensive litigation could be pursued to challenge inclusion or exclusion, but generally that doesn't happen if the votes are not close.

I think that the current provisions of PSLRTA allow unions to agree on who the bargaining unit should be for the restructured bargaining unit, and I can tell you, as I told you before about the city of Toronto, that there have been a number of votes across the province where unions have agreed to not participate after consultation with their members, and this has not been a huge issue.

So introducing a threshold of 60% means that hundreds of workers—perhaps thousands of workers, depending on how many downsizing mergers happen as the government continues to freeze budgets, or continues to transform health care—could have their bargaining agent and their voting actually stripped away from them. This in itself could result in discontent with the imposed bargaining agents and unrest in the workplace, which I'm sure is not the government's intention.

There are some examples where a union has a large percentage of the membership but a vote was appropriate. ONA and OPSEU are involved in a merger of two hospitals in Kingston, for example. The parties have agreed to hold a vote and have agreed on the scope clause. ONA is a craft union that represents RNs in one hospital. OPSEU represents the RNs in another hospital. Of the more than 200 RNs combined, ONA represents 39% of the RN workforce, while OPSEU represents 61% of the RNs. In this example, if the proposed percentage threshold were introduced, ONA would not be on the ballot for the vote, even though ONA is a craft union. The result denies the ONA presented RNs the choice to choose their bargaining agent during the merger of two hospitals.

The negative impact of structural change—and I used the hospital because that's what I'm familiar with—is particularly a problem for union members who are forced to transfer to a new employer. I can tell you from working in the health care system for more than 40 years that there has been more downsizing, upsizing, right-sizing, transformation, and modernization than you can shake a stick at, and health care workers, through it all, continue to be the loyal caregivers that they are, even though they've probably had change every two or three years for the last 40 years. The introduction of a threshold of more than 60% means that these workers would be totally left out in deciding not only where their workplace is or what location their workplace is, but who their union is, as well. This, against their entitlement to have a say in the workplace, will leave them powerless.

On to the constitutionality of Bill 109: We talked about this a lot in the Legislature. I know I spoke about it for an hour, and many more of us spoke about Bill 109. The vast majority of us actually spoke about this non-democratic amendment that the government is proposing.

In the mounted police case at the Supreme Court, the court found that the charter guarantees a meaningful process of collective bargaining, which includes a process that provides employees with a degree of choice and independence sufficient to enable them to determine their collective interests and meaningfully pursue them.

0950

The court noted that the hallmarks of employee choice include the ability to form and join new associations and to change representatives, and that, Chair, is allowed under the Labour Relations Act. At this point in time, workers have the right to unionize; they also have the right to decertify. There's a process there, so why shouldn't they have the right in this situation of a merger, amalgamation, transformation or successor employer? Why shouldn't they have the right to actually vote for the union of their choice?

Accountability to the members of the association is an important element of choice for them. We've heard from some legal experts—

The Chair (Mr. Shafiq Qaadri): Ms. Forster, just to remind colleagues: Any one speaker has the floor for 20 minutes, at which point I'm required to interrupt. You may, of course, resume speaking, but I do pass the floor to others, should they wish it.

Ms. Cindy Forster: Okay.

The Chair (Mr. Shafiq Qaadri): Are there any comments from any other colleagues?

Mr. Ted Arnott: We'd like to hear more from Ms. Forster.

The Chair (Mr. Shafiq Qaadri): I repeat, are there any other—Mr. Colle.

Mr. Mike Colle: I think there are obviously some very good points made by both sides. I appreciate their sincerity in bringing them forward. There are always two or more sides to a debate or argument. In this case here, I'd just like to put on the record some of the other side of this debate, which hasn't been on the record enough.

There are two very respected unions that have thousands of members who support the amendment to PSLRTA. I would like to put on the record, first of all, a letter from Sharleen Stewart, who is the president of the SEIU Healthcare union. I know that this was addressed to "Dear member of the committee." If you don't have your copy—I don't think you referred to it, anyways—I can make available this copy that was sent to all members. I assume that all members got it. She says:

"Dear member of the committee,

"Ontario is witnessing transition in the healthcare system and, undoubtedly, those changes will continue to take place as the provincial deficit is controlled and the population ages.

"Some of those changes will be more structural in nature and the added disruption of a vote under PSLRTA where a union has every prospect of success, is, in our view, unnecessary.

"The high financial costs associated with these campaigns are ultimately borne by our members and where one union commands a clear representation, or conversely, a diminutive share, they are resources not put towards the real challenges facing our members.

"We sincerely respect, but ultimately, do not share the views raised in opposition to this legislation.

"SEIU Healthcare supports and welcomes the changes contained in Bill 109.

"In solidarity,

"Sharleen Stewart

"President

"SEIU Healthcare"

Another union that serves many of its members across the province and across Canada—in fact, this is a national union—also disagrees with some of its fellow unions in the labour movement on this issue of PSLRTA and Bill 109. This is from Unifor. It reads:

"Greetings:

"Re: Bill 109

"As you likely are aware, Bill 109, Employment and Labour Statute Law Amendment Act, 2015 was brought before the Legislature on second reading today. I expect the bill to be referred to committee with public hearings in the near future.

"As you well know, Bill 109 would provide that the OLRB need not require a vote under PSLRTA to determine the successor union should one union represent a prescribed percentage of employees in any new, post-integration bargaining unit. Existing provision under PSLRTA allowing affected unions to reach voluntary agreement on a successor union; as well as a non-union option being on the ballot if 40% or more of employees are not represented would remain.

"Unifor accepts that this measure is a reasonable and practical approach to curtailing some of the regrettable mischief and turmoil caused by these PSLRTA campaigns—subject of course to what that prescribed percentage would be. Any incumbent union representing three of every four employees in these PSLRTA campaigns obviously commands the overwhelming advantage. Conversely, the union representing only one of every four employees is placed in a desperate and untenable position that can lead to bitter and lingering division and resentment among the affected workers.

"We have all likely been both David and Goliath in these campaigns—and the competition fostered by PSLRTA amongst our members channels their energies into selfish narrow interests rather than challenging the broader underlying restructuring processes and policies. We can't win in these broad struggles when we are spending such time and resources fighting often against all reasonable odds.

"In addressing Bill 109, our unions have a clear choice—division amongst unions with some embracing Bill 109 while other launch partisan attacks to preserve the right of a union under any circumstance to compel a vote. Or as in other jurisdictions, we as unions can in unity adopt a fair and reasonable limit in these future PSLRTA campaign; whether through a formal consensus amongst our unions or through input into Bill 109.

"I look forward to this discussion with you both individually and as the various representatives of the members potentially impacted by PSLRTA."

It's signed by Jerry Dias, the national president of Unifor. So those are two major unions that have a different opinion. I certainly respect the opinion of CUPE and OPSEU, who have had a divergent opinion. It's their right to have that divergent opinion.

I also want to read into the record from the Ontario Hospital Association. This is their submission to the Standing Committee on Justice Policy:

"The Ontario Hospital Association (OHA), on behalf of its members, is pleased to have the opportunity to provide comments to the Standing Committee on Justice Policy regarding Bill 109, Employment and Labour Statute Law Amendment Act, 2015. The OHA supports the goal of Bill 109 to help reduce the potential for disruption and delay for workers in the broader public sector, including in hospitals, when there are changes to bargaining units following amalgamations, restructuring and health services integrations; and to help to further ensure the rights of employees across the province are protected.

"As the voice of Ontario's 147 publicly-funded hospitals, the OHA has an ongoing mission to ensure that hospitals can meet their full potential to achieve a high-performing health system. The OHA has been recommending changes to the Public Sector Labour Relations Transition Act (PSLRTA) for a number of years to facilitate integration of health services. PSLRTA has a more substantial impact on hospitals and the health sector than the rest of the broader public sector because PSLRTA applies to 'health services integrations' in addition to other broader public sector amalgamations. As such, we are pleased to see the government's amendments to this legislation.

"The OHA proposes"—and that goes on. I just wanted to read those into the record to show that there is, obviously, a difference of opinion on these amendments to PSLRTA that are before you. I just wanted to read those into the record as a response to some of the legitimate questions raised by the opposition parties.

The Chair (Mr. Shafiq Qaadri): Thank you. I think we have both Mr. Hillier and Ms. Forster. Mr. Hillier.

Mr. Randy Hillier: Thank you, Mr. Colle. I was listening to your comments and I was wondering. First off, do you agree with those Stalinesque views that voting is an undue disruption and should be limited and prevented in the workplace by SEIU's comments, as well as Jerry Dias's comments from Unifor?

Of course there can always be different opinions. Stalin had different opinions about democracy as well. We choose not to accept that as a basis or a starting point for discussion or where the threshold of democracy ought to be. So I would like Mr. Colle to comment if he is in agreement that voting is an undue disruption, and should be limited, as he just read into the record by the SEIU. And while you're responding to that, Mr. Colle, maybe you can also indicate to this committee what were the political donations from the SEIU and Unifor to the government for—is this some sort of—

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The Chair (Mr. Shafiq Qaadri): Mr. Hillier, let's stick to the subject at hand. I'm struggling to allow your Stalin references, but do go ahead.

Mr. Randy Hillier: Well, listen, democracy is something worth defending. Voting is something worth defending and advocating for. If anybody here doesn't believe that democracy is worth defending, then you have to question why you're here in the first place.

This is a fundamental freedom that is protected by our Constitution, and this government is, with this schedule, diminishing that constitutional protection. I find it atrocious.

Whether or not Jerry Dias wants to diminish our constitutional protection, I don't give a damn. We have an obligation to protect and defend our Constitution, and protect and defend the freedoms of our constituents whether they're in a bargaining unit or not. That's what this Legislature is charged with: defending and protecting the freedoms in our democracy. I find it interesting that we have the parliamentary secretary to the Minister of Labour here on committee, but not one word in defence of our Constitution, but also not one word in defence of his own ministry's bill with regard to schedule 2.

We've put it on the record; we've asked for a response. Mr. Colle was kind enough to give us some different opinions that different people might have on schedule 2. I didn't hear Mr. Colle offer up his own personal justification why he will vote, or the government will vote, to take away the rights of people in Eglinton–Lawrence, or take away the rights of people in Mississauga or Barrie or anywhere else.

I'm looking forward to hearing from either Mr. Colle or Ms. Hoggarth or the parliamentary assistant: Why do you believe that you ought not to protect the Constitution, protect the freedom of your constituents, protect the freedoms and rights of everybody in this province, and why would you arbitrarily strike down—dismiss—people's ability to exercise their freedom of association under the Constitution to opt and select for the trade union of their choice?

If that is acceptable to this Liberal party, to this Liberal government, to strike down freedom of association and strike down the selection of the trade union of your choice, what else are you prepared to strike down? What else are you prepared not to protect in our Constitution? I would say the answer is you're prepared to strike down anything and everything, if you're prepared to do that.

Mr. Colle, do you agree with Mr. Dias, do you agree with the SEIU, do you agree with the Ontario Hospital Association that voting is an undue disruption and it ought to be limited?

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

Ms. Cindy Forster: I would suggest that if there were teachers today in the middle of mergers and amalgamations or there were municipal workers, or even if there were private sector workers in the midst, we would have had more of the unions coming out in support of having no change to the PSLRTA legislation.

I have to say that I'm really surprised at this so-called progressive Liberal government to even take this issue on and to actually try and interfere in the democratic votes of workers in any sector. Although I shouldn't be surprised, because they're doing it with respect to the trades—the sheet metal workers, the plumbers, the pipefitters and the International Brotherhood of Electrical Workers—with their EllisDon bill, Bill 144.

I guess what's more surprising is that we are all elected people sitting around this table, with the exception of the legislative counsel, the Clerk and Hansard. Would we support having a run-off vote to make sure that the governing party had 51% when they're elected at a provincial or a federal level? We don't want our democratic rights interfered with. You can actually form a government in this country with 38%, 39% of the vote, provincially and federally, where 62% of the people don't support the government. But yet, in the same breath, those elected people are actually taking away the rights of the people they were elected to represent.

It just amazes me that we can sit here and actually do that, when we all know that this is not an issue. So I ask again, what is the reason for actually bringing forward this amendment? The government must have some reason that they're doing this, but they're certainly not prepared to share it with us.

Last week at the deputations, Ms. Martins suggested that the government was in discussion about lesser thresholds. We haven't seen any amendments coming forward. She's kind of frowning, but, in fact, it was when one of the deputants—I think it was SEIU at the time, and I asked a question of that deputant. But I don't have the full Hansard yet, which in itself is problematic, so I can't actually quote it.

I actually raised that issue of not having the Hansard and how it can negatively impact your amendments and your discussion when you get to clause-by-clause. What happens is that the sub-committee gets together. They put together a very tight schedule: You have deputations on Monday and you have to have your amendments in by Wednesday at 10 o'clock. But you don't have a Hansard. We don't have a Hansard because we don't have enough staff to actually prepare the Hansard, because the House comes first. I'm told—and Mr. Arnott may be able to tell me this because he's been here a lot longer than I have—that in the old days, committees used to sit when the House wasn't sitting—

Mr. Ted Arnott: The good old days.

Ms. Cindy Forster: The good old days—so, in fact, the work of the people who actually prepare the Hansard was spread out throughout the year, as opposed to trying to get it all done while the House is sitting, which is impossible.

Although Ms. Martins is kind of frowning and suggesting that she didn't say that, in fact, she did say that the government was looking at a lesser threshold. She said that in response to a question that I asked of one of the SEIU members who was here in deputation.

So I ask, for the record, what is that threshold? In my view, the threshold should be no threshold, that it should remain the same, because that is what's working. That is what has been working for 20 years and it's not an issue.

1010

But anyway, back to where I was before I was interrupted, the constitutionality of the bill: Union legal experts that we actually heard from this past week—and we heard from Liz McIntyre from Cavalluzzo Shilton McIntyre Cornish Barristers and Solicitors here in Toronto. I think Liz said that she had been in this labour law business for more than 40 years. They are of the view that these proposed amendments to PSLRTA would not stand a charter scrutiny.

By depriving members of the union of their choice on the basis that they fall below an arbitrary minimum percentage of a newly integrated bargaining unit is an unnecessary infringement of their charter right to the union of their choice. So the proposed change is totally unnecessary. I don't know why the government would want to embroil themselves in a charter challenge. They have enough court cases and investigations going on—I think there are three or four OPP investigations at the moment and several lawsuits around winter road maintenance—and now they want to embroil themselves and spend taxpayers' dollars on a charter challenge.

The legal experts are saying the proposed change is totally unnecessary. There have been no problems under the current provisions. Having a vote without an arbitrary cut-off is consistent with workplace democracy and the charter of rights. We have legislative counsel here. I'd actually like to ask Ms. Hood, what is her opinion of a successful charter challenge with respect to this amendment being proposed by the government?

Ms. Julia Hood: I'm not a constitutional law expert. It would be up to a court to decide the constitutionality of the provision. I couldn't endeavour to say how a court would decide.

Ms. Cindy Forster: Are you aware that the government even reviewed the trilogy of cases with respect to constitutionality when they were actually developing this amendment?

Ms. Julia Hood: Well, that would be a question to ask the government.

Ms. Cindy Forster: Well, I could ask them, if they were listening. Members of the government, did you actually consult with legislative counsel with respect to constitutionality when you proposed this amendment? Did the Ministry of Labour do any of that? Who is the parliamentary assistant, anyway?

Mr. Randy Hillier: Mr. Delaney.

Ms. Cindy Forster: Mr. Delaney, could you answer that question for me? No response; it's like question period.

Mr. Mike Colle: Well, it's great to get a minute in somehow. Thank you for the time.

Ms. Cindy Forster: I wasn't quite finished.

Mr. Mike Colle: Do you want the answer or you don't want the answer?

The Chair (Mr. Shafiq Qaadri): Ms. Forster, as you like. You did ask a question and I think Mr. Colle is now responding.

Ms. Cindy Forster: Oh, he's going to answer? Okay, thank you.

Mr. Mike Colle: Well, thank you for the democratic right to speak here, yes. First of all, I want to say that I really object to the previous name-calling done by the member from the Conservative Party. That's totally uncalled-for, especially when he also tried to malign presidents of two major Canadian unions. He should apologize and withdraw those slanderous comments he made.

Mr. Randy Hillier: When they're acting like Stalin, I'll call them Stalinesque.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Let's continue.

Are there any further comments? Ms. Martins.

Mrs. Cristina Martins: Can I just, for the record—and as Ms. Forster correctly said, we do not have the Hansard right now so we can't actually go back. But what this bill actually proposes is a minimum of 60%, so I would not have suggested that the government was in any type of discussions to lower that threshold. We would be in discussions to see what that threshold would be, but it would be beyond this piece of legislation and with further consultations. I just wanted to put that out there. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. We have one minute left before we officially recess for question period.

Ms. Forster?

Ms. Cindy Forster: I'm going to actually go back to the case law, which is a historic win for workers' rights. The Supreme Court of Canada released three decisions in 2015, "defining the scope of constitutional protection for workers' rights under section 2(d) of the charter. This new labour trilogy advances protection for the fundamental rights of workers, and continues the trend in the jurisprudence toward workplace justice.

"The jurisprudence as a whole now unequivocally establishes that freedom of association under 2(d) of the charter in the labour context protects the right"—

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We will be recessing until 2 p.m. I would encourage us to consider our language and personalized remarks.

We'll return at 2 p.m. Thank you.

The committee recessed from 1015 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. On time, precisely. Where were we?

The Clerk of the Committee (Ms. Tonia Grannum): We were in debate on schedule 2 of the bill.

The Chair (Mr. Shafiq Qaadri): The floor is open for comments on schedule 2.

Mr. Randy Hillier: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Preferably parliamentary language.

Mr. Randy Hillier: Always parliamentary language—anyway, at our last exchange I was asked to apologize for some comments. I just want to make it clear: In those comments I was referring to Mr. Colle's reading into the record letters of support for schedule 2 by the OHA, by Unifor and by the SEIU. With the SEIU specifically, there were comments made that voting is a disruption and that they ought to be limited as a justification, in the SEIU's view, of this attack on people's fundamental rights and a direct challenge to constitutional protection of freedom of association and freedom to choose who will be one's bargaining agent.

I suggested that the view that voting is a disruption and ought to be limited was a Stalinesque view. I didn't ascribe that to Mr. Colle; that was the quote that he read into the record on behalf of SEIU. I just want that to be clear. But I did ask a question of Mr. Colle—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, we appreciate your clarification, but if we could just—

Mr. Randy Hillier: It is important for the committee to know. Do Mr. Colle and others on the government side support the view that voting is a disruption and ought to be limited? Maybe I'll get a response. I know that the parliamentary assistant has been mute, silent, and has not wanted to defend the government bill as of yet.

But I would like to read, for the committee to hear, a letter that was drafted by OPSEU, the Ontario Nurses' Association and by CUPE that was delivered to the Minister of Labour, the Honourable Kevin Flynn. It was written on October 1 of this year. It says:

"Dear Mr. Flynn,

"The Ontario Legislature currently has before it Bill 109, an amendment to the Public Sector Labour Relations Transition Act, 1997. If adopted, Bill 109 would represent a dramatic assault on workplace democracy in our province."

Interesting choice of words, "a dramatic assault on workplace democracy."

"Bill 109 represents a sweeping change to the way organized labour representing public sector workers conducts its democratic processes inside the workplace. It would deny workers, in a merger vote, the right to elect their union of choice.

"Currently, merger votes in Ontario must be conducted irrespective of which bargaining unit enjoys the largest number of members. Bill 109 would change this provision.

"As proposed by your government, no merger vote would be required if one union represents more than 60% of the combined unionized workforce.

"Our labour organizations have adopted a strong position in opposition to Bill 109. The proposed legislation does not take into account that while one union may represent a majority of workers, it doesn't mean that same union enjoys either a superior collective agreement or its ability to enforce the contract.

"In a merger vote all workers should be entitled"—they use the word "should"; we know that the Constitution and the law of the land says "must"—"to judge each union on their own merits. Bill 109 rewards one union for having more members. It doesn't allow workers to decide for themselves which union is strongest at the bargaining table or which provides services that members wish to receive.

"On behalf of the Canadian Union of Public Employees, the Ontario Public Service Employees Union and the Ontario Nurses' Association, we strongly urge you to amend Bill 109 to address its shortcomings in respect to maintaining democracy in the workplace by eliminating the 60% threshold on merger votes."

And that's signed by Warren "Smokey" Thomas, president of the Ontario Public Service Employees Union; Linda Haslam-Stroud, president of the Ontario Nurses' Association; and Fred Hahn, president of CUPE Ontario.

I'll just maybe emphasize that these are organizations, collective bargaining agents, that bargain with the government. These are unions that represent our employees, the employees of this province. They're telling you in very clear, very unequivocal language that you're wrong—that you're absolutely wrong.

As far as I understand, they've not received a response from the minister. It may be the parliamentary secretary would be able to confirm or deny if the minister has indeed responded. I would be happy to hear what that response was to this letter of October 1. I know the member from the third party also brought up a letter addressed to the minister. As far as I understand it, there hasn't been a response to that letter as well. But if there has been, we certainly would be happy to have those letters read into the record, or even paraphrased or summarized to give us some information, give us some knowledge, about why the government is so steadfast in its assault, this dramatic assault, on workplace democracy.

One has to say, we've now had over an hour of discussion, basically, on schedule 2. The only government member who has offered up any comment is Mr. Colle, and I'm glad that he has, but I do know that the parliamentary assistant is here—

Mr. Mike Colle: I'm the parliamentary assistant.

Mr. Randy Hillier: Oh, you're the parliamentary assistant? Pardon me. I'll correct my record: Mr. Colle is the parliamentary assistant. I was under the—

Mr. Mike Colle: It changed last year.

Mr. Randy Hillier: Okay. My apologies. So Mr. Colle, maybe you could explain to the committee what the minister has responded to these letters from OPSEU, CUPE and ONA, and give us some indication why this government is choosing to take on a battle—and a battle that I can't see as being defensible, a battle that attacks people's freedom to associate and the right to choose who their bargaining agent is.

With that, I will listen patiently and intently to Mr. Colle's response.

1410

The Chair (Mr. Shafiq Qaadri): Mr. Colle.

Mr. Mike Colle: Sure, thank you, Mr. Speaker. Again, I just want to paraphrase what was in the three letters I read into the record that were from three different points of view from the letter that you read into the record.

I read from Unifor. Jerry Dias said quite plainly that he and his union, which is a major national union plus an Ontario union, support the threshold on mergers as it would be productive to continue the good work that labour unions do and avoid the disruptions that occur when there are mergers.

I also read on the record the comments that the president of SEIU made to the same effect. The president said that she thought that when mergers occur, there can be all kinds of acrimony, there can be all kinds of divisive forces within—

The Chair (Mr. Shafiq Qaadri): Mr. Colle, just before you continue, Ms. French, would you like to speak next, or are you just smiling at me in general?

Ms. Jennifer K. French: Well, I'm very pleased to be here and offer my thoughts on the discussion, but I can wait my turn.

The Chair (Mr. Shafiq Qaadri): Okay. Mr. Colle.

Mr. Mike Colle: The president of SEIU basically said that their union, which is another major union in Ontario, supports the threshold being in place when there is a merger.

You referred to the nurses' association's comments in opposition to this change. We have the Ontario Hospital Association, which deals with these unions in the workplace on a regular basis, saying that they support this amendment, which would allow for thresholds to take place once there is a merger and the majority of the workers belong to one of the unions—that the merger could go through under those circumstances.

It is a change, and whenever there's change, there are different points of view. Obviously, in this situation here, there is a split in the labour movement on which is the best perspective on this amendment. That's not unusual.

We also note that this type of threshold already exists in two other Canadian provinces, Alberta and Saskatchewan, where they have the same thresholds, or variations of the degree of thresholds, on mergers.

That is why we are supportive of this change: because we've also listened to these major unions and the Ontario Hospital Association, who think that this would be an improvement in terms of further workplace effectiveness, harmony and getting down—as I think Mr. Dias said—to the real work of improving workplace conditions, better wages and better benefits for workers. Obviously, we're not going to have everybody on-side, but there is a diverging opinion here.

Mr. Randy Hillier: Maybe I'll just follow up on that.

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

Mr. Randy Hillier: Yes. We know, Mr. Colle, that the concept of rule of law, the concept of statutes and legislation—fundamental to it is the protection of minority rights. That is one of the keystones of legislation in our system: protection of minority rights, and not to allow the majority to trample upon the rights of the minority.

Clearly, this schedule 2 is in direct contravention to that keystone of democracy and that keystone of the rule of law, where, instead of protecting minority rights, it is going out and depriving the minority of that right that they now hold.

I can understand why some unions might want this for economic reasons. If they are the largest bargaining unit, if they have over 60% of the workplace organized into their trade union, I can understand that. It would be very convenient; it would be very prosperous; it would be all kinds of advantages for that union, but it's no advantage to the people who are represented by those unions.

We have to make a distinction. Is the legislation here for the protection of the employees or is the legislation for the protection of a few unions, to make it easier for them to merge, acquire, amalgamate and bring more people and more dues under one union's operation?

I hope and I trust and I have no doubt that you, Mr. Colle, do not want to trample upon the rights of the minority and trample upon that keystone of democracy, but it appears that your minister is willing to do so. Although he's not here to speak to the bill directly, you are here in his stead and you're left to defend this.

You also mention that there are two other provinces that have similar legislation with regard to mergers, acquisitions and amalgamation. You mentioned Alberta and Saskatchewan. I've been here long enough—I've been here for eight years—and I've heard the debates in the House. Never once have I heard this Liberal government, in eight years, hold up Alberta labour legislation as the model that they want to follow and model their public policy after—and I'll include Saskatchewan.

It's very unique and very ironic that, for the very first time, I hear the government—and yourself, Mr. Colle—using Alberta and Saskatchewan as models for Ontario to replicate with our labour legislation. I think you'll agree with me: This is the very first time that this government—or the Liberal government since 2003—has exhorted the efficiencies and the value of replicating Ontario labour legislation along Alberta and Saskatchewan lines. It appears that you may be picking and choosing what parts of Alberta and Saskatchewan labour legislation that you agree with and want to replicate here.

I'll leave it at that. I think you will understand that this is a trampling of minority rights. It's using legislation in direct contravention to its purpose of protecting minority rights and is now trampling upon it with schedule 2.

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

Ms. Jennifer K. French: Thank you, Chair. I'm pleased to weigh in on this conversation, and I'm sorry that I wasn't here this morning. I understand that it was very enriching conversation. I'm pleased to finally have made it.

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I would like to take this opportunity and spend a little bit of time talking about schedule 2. If I may, I'd like to actually refer back to last week, when we heard from CLAC when they had come in to speak to us as part of the hearings process. We heard from Ian De Waard from CLAC, and I'll read directly from that. Regarding schedule 2, he said:

"The proposed changes to the PSLRTA have brought our leadership team at CLAC a great deal of concern. Our union has long been a proponent of ensuring that workers can democratically and collectively choose the union that represents them. The collective power of the workers to build a better workplace community is enhanced, not diminished, when workers can freely elect to join, retain or displace the union that represents them.

"CLAC does not support the change in this section of the bill." I will add that we don't either, but back to this. "It permits that a unilateral decision to amalgamate workplaces in the broader public sector will cause an automatic change in bargaining agent. When one of the groups is not large enough, this change will take place with no regard for the will of the affected workers. In our opinion, this amendment undermines a basic freedom of association, an essential right and Canadian value."

Further to that, "Such a decision represents the will of that workforce in that place and time and this collective decision should be binding until or unless the workforce ... chooses another union or chooses to become non-union."

They spoke about workplace democracy and union accountability. As they said, "The act of democratically choosing a bargaining agent is an important exercise in building a strong, healthy union movement."

And while we heard from others who talked about morale and talked about some of the challenges of that process, CLAC reminded us that they too have been through the merger process, and that their example is that workers at a "small community hospital had been represented by CLAC for more than 20 years. Those members did not want a change in representation or to forego a collective agreement that they had worked hard to develop and to craft for their particular workplace." However, in the end, their members were absorbed into that other union, but only after mounting a "campaign for choice, and after having had the opportunity to fairly cast their vote. It was not a perfect outcome and CLAC has made some suggestions to address this kind of scenario in future, but these suggestions are beyond the scope of this bill. In that case, the electoral process was democratic and the members have accepted the result because they were entitled to the process."

There are some key points in there, hearing from someone who came to committee to be heard on this issue, who has been through the process and recognized that it was perhaps an uncomfortable process and a challenging one. To recognize that it was a necessary part of the process in strengthening not only their workplace, ultimately, but strengthening democracy—it's a reminder. It isn't just us sitting here in opposition having opinions; this was people who have lived through it, and have worked through it, and were fighting to protect their right to go through that process.

I will remind you as well that when we were discussing this last week and talking about perfect outcomes and democratic processes—we just lived through a fairly large democratic process; you may recall the federal election. I would like to go on record saying it was not a perfect outcome. I would also like to say that it is part of our democracy. As we heard from CLAC that their members strive to accept the outcome of a process they've been involved in because they were entitled to the process, I am also struggling to accept the outcome of that. But that's the nature of democracy: Democracy can be uncomfortable, and I think that it should be. I think it should be messy when need be; doesn't that strengthen a process?

I'm glad to remind us of what our partners at CLAC had come to tell us, but also there were some questions that were raised last week. Maybe these answers came out this morning as part of this process and I wasn't here, so perhaps I'll ask them again, and maybe I can get some answers.

What happens in a merger? When we're talking about disallowing a vote—if we have a merger and a union representing over 60% of the combined workforce, that they just automatically win and become the bargaining agent, what happens in a merger when you have two merging workplaces and one that isn't unionized? If they are the majority, if they are over that 60%, what happens? Does that mean that no one, then, is unionized? That they win because might makes right, and so we no longer have a represented workforce? I'm curious about what happens there.

Also, I had asked this question. When these mergers happen—and I understand that in the process sometimes it's going to be a necessary merger; other times it might be a little bit more constructed. There may be some say in how we can combine workforces, like matchmaking—sort of merger-making. If we always know the outcome, if we always know who is going to win because there isn't going to be a vote, then what happens if you have two workplaces and a represented workforce—someone is represented by a union that might challenge the employer a bit more, that might challenge the government a bit more, that might be a little bit louder or represent in a more vocal or uncomfortable way?

Doesn't it seem, for the sake of trying to control the situation, that we could ultimately have mergers that are crafted in such a way that it's almost like chess, that you would have the larger union take out the smaller one? You could do that time and time again until you don't have any unruly or vocal unions left because all of them that you have allowed to win, perhaps, are in your back pocket.

Interjections.

Ms. Jennifer K. French: I appreciate all of the opposition support here today. This is clearly an important issue.

Anyway, back to my point about matchmaking or merger-making: I see it as an opportunity for the government potentially to stack the deck. I don't think that's fair. I don't think that's right. As I said, might doesn't make right at all.

So back to the fundamental point of this, that workers should have the right to choose. Workers also have the right to accept or not accept the outcome. As I said, democracy can be messy and sometimes I think that it should be. If we just always accept it because it's a foregone conclusion, nothing will ever grow, nothing will ever change. I think democracy—by the way, I appreciate having the opportunity to really talk about democracy because here in the Legislature we talk about it, but it doesn't really resemble the democracy that many people have fought for. What many people actually think is happening in this Legislature may or may not actually resemble democracy some days, and I'll come to that.

I would say that democracy is a process. It's going to have give-and-take and it's going to be uncomfortable and sometimes you win and sometimes you lose. I know that this government loves the ballot box part of democracy. The last couple of elections certainly have worked in your favour when it comes to that. But I've been sitting here in committee at different times and I've heard things that I really haven't appreciated as a member of the broader community: "Well, if people don't like it, then they can let us know at the ballot box." Well, that's a ways away. What happens in the interim? You like the ballot box part, although not when it comes to schedule 2; you want to do away with the ballot box, so only when it suits you, I guess. You like the ballot box part of democracy, but you don't appreciate the engagement part.

I value the committee process. I imagine what it could be when not sitting across from a majority. I respect what it could be. But what we've heard in committee when people come and give their submissions and they give their input—each party has the opportunity to have three minutes of questions and comments or to engage the people who have travelled to Queen's Park. I think that's very telling, when it is somebody who comes to a hearing and wants to share and it's a contrary opinion. Time and time again, we watched the government talk over them or talk through the full three minutes and not give them an opportunity to further the conversation. I think that's telling. If you don't like what someone has to say, then by goodness, don't let them say it. I think that is not just problematic; I just think it's rude. But it certainly isn't what engagement could look like, nor is it what it should look like, to talk over people they don't agree with or to disallow them from sharing.

In opposition, we call, fairly often, for bills to be travelled or to take the conversation outside of the GTA or to take it to different regions, to include other Ontarians in the different parts of the process. In fairness, some issues and some bills have travelled. I had the opportunity to—I'll use the term "crash" the ORPP hearings in Kingston. I recognize that different issues have made their way, to some extent, around the province.

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But I thought it was interesting, at the ORPP hearings, that there was a discussion paper, and that people were allowed to speak for a limited time on pre-determined, pre-approved questions: "These might be the three questions that we want to discuss. That's it; that's all. Oh, you have a fourth point? No, this is not the time nor the place."

Scripting what people can say or outlining that this is all you can talk about is not democracy. I kind of feel like it's—can I say "cowardly," or is that not parliamentary? Anyway, I feel that you should invite that input. You should invite the argument, potentially, the dissent, if necessary, but definitely the conversation. Why are you afraid to hear what they're going to say? If your policy is strong enough, if your bill is strong enough, then it should withstand criticism; it should withstand the argument and it should hold water.

Guess what? If it doesn't, good; then you know. Then you can strengthen it. Then you can re-evaluate it. Then you can scrap it and start over. Isn't that the point of having debate? Isn't that the point of involving and engaging? But disallowing or limiting what democracy can look like is not how we strengthen our system.

I had mentioned travelling, but consultations, as I said, really are only on the government's terms. We've been holding a lot of town halls, in opposition, going around—we've told you about them—in regard to the sell-off of Hydro One. At those town halls, it's exactly what you would expect. It is members of the community, members of the business community, people from across the region coming and asking what they can do to stop it and how they can be involved, wanting more information because they haven't had information all the way along. People are angry. People are confused. But it's people wanting to engage.

In fairness to both opposition parties, we've both been engaging in that process. The government has not. Maybe it's because you know exactly what you'll hear and it's contrary to what you want to hear, but you should still have to hear it.

Back to the point—I'm going to say it again and again—that democracy might be messy, but we should embrace that. It's a chance to grow. It's a chance to improve. A little science lesson—maybe you can appreciate this. Some of the strongest rock on planet Earth is metamorphic. It's formed through intense heat and pressure, and that's what makes it so strong. It's that natural conflict that motivates evolution, that motivates change and that actually builds our foundation. But then, we have a government that is supposed to be leading the way here, and the leaders that the masses are looking to—not just for guidance, but trusting that you're looking after things and you're doing things in the best way possible—are afraid of heat. You're afraid of that pressure. Instead, you try to squelch it or vilify it or undermine it and discredit it, and that's—again, back to the point—not how we would strengthen our system. I think that we should be embracing democracy.

Back to this schedule of this bill: We are talking about a vote. We're talking about, in a workplace, people's right to actually choose who will represent them. We can talk about discomfort. We can talk about morale after a vote—my tone sounds like I minimize that.

That may be a natural part of the process, but it is a process that should be allowed to happen. It's a process that should be encouraged to happen. Because to even have union representation, chances are that there has already been pressure and heat, potentially negative, which have led to that need for representation.

When you have a merger, then you've got an opportunity to re-evaluate. Is your current representation what you deserve, what you want, what is best for that work environment, or is this other one over here? But it's about choice. It's about using their voice. It's about getting the facts and the information—and yes, is there going to be money spent, as we've heard by the unions? Sure.

But when we're talking about cost, what's the cost of not having the vote? What's the cost of just saying, "Oh, forget it. You know what? They're bigger. Never mind. Oh, well"? That's not what we want. That isn't what I imagine workers would want. Workers want to be appropriately represented and we need to allow that to happen. In fact, we should encourage that to happen.

I'm going to go back to my point that I was making about the government not engaging or being afraid to engage. When someone doesn't agree with you, take it, learn from it or ignore it, but process it. If someone doesn't agree with you, so what? Don't ignore them; don't discredit them. We've got independent watchdogs; we've got offices like the Auditor General that criticize you—and then it's sort of, "Oh, well, she must have meant this," or "Ignore, discredit or bury that information. We don't want to talk about it because it's uncomfortable." It's an opportunity for you to strengthen. Don't you want to put forward bills that people don't challenge because they're as strong as they could be? Don't you want to put forward a piece of legislation where all the stakeholders say, "Yes, we were consulted, and while we may not have agreed with it, they took it into consideration. We feel a part of the process"? Isn't that what you ultimately want? Doesn't that ultimately strengthen you as a government?

New information should give you a chance to re-evaluate or to recommit, and I think discussion, dissent or argument isn't something to shy away from or disallow. I think that it's something that underpins—not undermines—democracy.

Imagine; imagine what would happen if this was a government that listened. You might learn something. As I said, the bills might be better. You might have stronger legislation, ultimately. I suspect you'd have more respect from Ontarians, because you seem to be losing that hand over fist as they keep finding out that you're not interested in their input. And I think, ultimately, they'd have more faith in the process. Isn't that why we're all here?

I've said time and time again that change is uncomfortable. So what? Then grow, then change course—or stick to your guns because it was the right argument. Commit to something. But not allowing people to have their say doesn't make you seem strong; that makes you seem like bullies over and over.

Back to the trade union movement and schedule 2, specifically: The trade union movement, I would say, has grown out of conflict and fire. They have a passionate and—vibrant, I think, is the polite word when looking at their history. They're certainly not afraid of a bit of fight. They've been fighting for fairness; they've been fighting for rights; they've been fighting for people's rights in the margins, not just for workers. I think I maybe would challenge them. If they lose a vote, so they lose a vote. Then they can lick their wounds or they could re-evaluate, or maybe they could strengthen. They can do any number of things. That's their right as an organized group. That's their charter right as an organized group. Why are we taking this on and undermining it—

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

Just to inform my colleagues of the protocol, a speaker is welcome to speak for 20 minutes at a time. At the end of the 20 minutes, they must conclude. The floor is now open to any other speaker, including the NDP.

You are welcome to speak again, but after a little bit of rotation elsewhere.

The floor is now open.

Mr. Randy Hillier: Chair?

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

Mr. Randy Hillier: Thank you, Chair. We're not getting too much response for any of our questions. We've still not seen any indication that the government side is willing to respond to this committee any more than they're willing to respond to the unions—OPSEU, ONA and CUPE—in their letters to the government about this assault on workplace democracy.

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And, Chair, I have to say this: In the absence of a defence, in the absence of advocacy by the government, when thoughtful, good questions have been put to the government side and there is a refusal, an adamant refusal, to respond to those requests for information, one must become suspicious of what is going on. That is the job and the role of every elected member: to be an advocate, to speak out, to be vocal. When we see members choosing not to be vocal, choosing to have some duct tape placed over their mouth instead of being vociferous advocates for their constituents, suspicions do arise.

So I'll ask this directly to the parliamentary assistant: What is the motivation behind this? I have in my hand information from Elections Ontario that says that last year Unifor contributed $47,515 to the Ontario Liberal Party—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I would just respectfully caution you. I think you are kind of crossing the parliamentary/unparliamentary line there.

Mr. Randy Hillier: Well, this is a matter of the public record. I'm just bringing the public record to everybody's attention.

The SEIU contributed $85,595 to the Ontario Liberal Party in 2014. Now, those just happen to be two of the unions that the parliamentary assistant chose to read into the record regarding their support of assaulting workplace democracy.

Just to put it on the record, I don't believe democracy should be for sale. I don't believe that legislation ought to be for sale. Legislation is to protect the rights of the minority. Legislation must be consistent with our Constitution. It does a great disservice to people when governments bring in legislation that knowingly will cross over into unconstitutional grounds and, in this case, cause unions to spend significant amounts of their workers' dues on a court challenge. It costs the Ontario taxpayer significant amounts of money for our lawyers to challenge those constitutional challenges. And it also takes away and diminishes the access to justice for all others who are seeking remedies in the courts, but who are displaced because of constitutional challenges.

We know that this is going to happen. It is evident. You don't have to be a constitutional lawyer. Just read some little bit of jurisprudence and you will come to the same conclusion: that taking away the ability for people to choose who their bargaining unit is is unconstitutional.

So, again, I read this into the record. I'd like to be able to say, "No, our democracy is not for sale. Our legislation is not for sale. I accept or understand the government's arguments. I understand their advocacy. I understand what they're saying." But I can't understand any of it when they are silent, when they choose to be mute on this subject, when they choose not to defend the legislative framework that they've advanced. It is inconceivable that a government would advance legislation and refuse to defend their legislation. That must raise red flags and suspicions by everyone, everywhere. It won't go unnoticed. There can be silence on the government side, but it won't go unnoticed.

Every union worker will know that this government has launched a direct attack on their constitutional rights and they will be suspicious of the motivations as well, because you choose not to defend your position, you choose not to provide a rationale—absolutely no arguments advanced other than an oblique reading into the record of SEIU's and OHA's and Unifor's position, but not actually saying that they agree with those positions, not actually saying that they agree that voting is disruptive and ought to be limited, just using it as a different perspective. But we can see, through that oblique argument, you are saying—because of the absence of any other argument, you have said it in spades—that you believe voting is disruptive and it ought to be limited.

I can say to everybody in this province, whether you're part of a collective bargaining unit or not, when we have a government that puts forth that voting is disruptive and ought to be limited, who knows where they'll go? But it won't be pretty; it won't be nice. Are we going to see that anybody who was elected with greater than 60% in the last general election will not be contested in the 2018 election because it might be disruptive and it ought to be limited? Foolishness. Foolishness. For five members on the government side who were duly elected, who have sworn an oath, to sit there in silence while they attack constitutional freedoms and constitutional protections is atrocious.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. I would once again just respectfully remind all our colleagues to please adopt parliamentary language.

The floor is now open for any other—Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Chair. I am very pleased and honoured to submit to this committee and to get myself on the record. I will try to be brief, Chair. I have to go into the House at 3:30, so I'm only going to take up about 19 minutes and 59 seconds of the allotted 20-minute rotation.

Obviously, the government understands the trepidation which the opposition has indicated around the provisions of schedule 2 in Bill 109. It has been well articulated, I'm sure, through submissions through my colleagues in the House and those who have made submissions to the government prior to the bill being introduced and post the bill being introduced.

I don't know if members of the government understand or know that there was a brief consultation with stakeholders around the bill and specifically schedule 2. I'll point to CUPE's submission that in 2013, the office of the Minister of Labour reached out to CUPE and other unions to consult on the very kinds of changes that we're talking about today, specifically schedule 2 of Bill 109. Following that consultation, CUPE was contacted directly by the Minister of Labour's office and advised that the government would not be proceeding with these changes.

What that indicates to me is that somebody gave their head a shake in the Ministry of Labour's office and realized that this was not going to have buy-in by the majority of the stakeholders. Just on the surface of it, you weren't going to have buy-in. You had ample evidence that this provision was problematic. I would hope that the brain trust within the ministry realized that, ultimately, that specific provision would end up being challenged as a charter challenge, as there's ample jurisprudence around similar attempts to circumvent labour law in other jurisdictions.

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I'll point my colleagues across the way to three decisions which have been referred to as the new labour trilogy: the Saskatchewan Federation of Labour v. Saskatchewan, the Mounted Police Association of Ontario v. Canada and Meredith v. Canada. So you've got a track record. You've got precedent there, which should have guided you and should have made you aware that this was a slippery slope, and one that was indeed going to be fought.

However, it's amazing that this government doesn't regard labour rights, as they've been fought for and

legislated over the years, as being sacrosanct. I think that at every turn that I've seen since I've been elected, this government has attempted to tweak and demean and diminish those rights that have been so vehemently fought for over the years. You do an injustice to those who have come before us to ensure that there was fairness infused into our labour law regime. You do an injustice to workers who are seeking to protect and to participate in their democratic right to choose representation in their workplaces. You do an enormous injustice to that history—and to the future, you do damage. This indeed would set us on a slippery slope.

I would imagine, given the government's response and the body language from my colleagues across the way at the moment, that there's no intention of you moving in any direction on this other than forward. It's quite sad, in fact, that no one can turn this ship around. No one can say, "Let's let common sense prevail here," and pull this one back, as it obviously tramples on the democratic right of workers to choose their own representation.

Now, my colleague to the right of me, Mr. Hillier—

Ms. Catherine Fife: To the very right.

Mr. Taras Natyshak: To the very right. He expressed some concern around the 60% threshold. I'll give my friends in the government a little bit of data, a little bit of history. I was elected in the last provincial election with 63% of the vote. Given the conditions of this bill, should, then, in the next general election, nobody from any other party run against me? Should the constituents of my riding not have the right to choose a different representative? My goodness, Chair, I would fight—even though it would secure my job and the honour that it is to represent my riding—against that tooth and nail, because it would represent a tearing back, a clawing back of the democratic process. It's not what we're in this job for. We're in it to protect that process—to nourish it, to support it and to promote it around the world.

There are jurisdictions around the world where workers don't have the right to even be represented by a union. When they do, they receive and are the victim of so much oppression by corporate entities and by government entities. There are labour activists who are jailed, they're abused, they're threatened, they're harassed and sometimes killed, all around the world. You have to be cognizant of the struggles that are happening around the world and that it is our job as a jurisdiction to promote that right, not only because it is democratic—it represents freedom of assembly, freedom of representation, freedom of choice—but it also represents a net economic benefit, if you do indeed believe that labour unions bring an economic benefit to the working class, as we do as New Democrats.

What you're signalling today, as members of the government complicit in this schedule, is that you find the right to choose your representative in a democratic fashion inconvenient and not economical. That's the rationale that I have heard and seen that's been given: that it's too time-consuming and it costs too much money. Make that argument during a general election. I dare you to make that argument. Say, "We're going to cut down the number of polling stations. We're going to limit the number of ballots that we're going to print."

We've seen that happen before in this government. We've seen threats and challenges and changes and abrogation of the format. Those people, the Harperites, got tossed out of government. Is that the road on which you are treading? It seems as though you are.

Chair, honourable colleagues, I just find this incredibly offensive, given the history of the labour battles that have been waged and fought in Ontario. I find it incredibly offensive as a democratically elected member of this Legislature and I wonder what's next, unfortunately. I wonder, had we not been vigilant as an opposition party and entity, where we would end up. It is, of course, our responsibility to call you out on these, and it's your responsibility to listen. We hope you do.

One of the first things that you learn when you walk into the Legislature, if you take the guided tour, is that on the crest of the moulding on the opposition side—as government members, you'll see the owl that rests on the crest. We look at the eagle. The owl is to try to remind you, each and every day that you set foot into this assembly, to remain wise: to be wise about the legislation that you're putting forward, to give it thought, thorough consideration as to its effects and its ramifications. You have to do that. Despite what your party is telling you to do, you have to voice what you truly believe and know is right and wrong.

And we're talking about fundamental aspects of democracy here. This is the right to choose your representative in a labour setting, in a workplace setting. There's nothing more fundamental than that.

We look at the eagle and it tells us to be vigilant. It reminds us to call you out. The challenge is, obviously, for you to do the right thing. We're telling you here today: Pull this schedule back. As committee members, do the right thing. Talk to your minister. Talk to your leader. Talk to the Premier. Tell them that we can find another way around this.

Democracy isn't that inconvenient, nor should it be seen as such, ever. You'll be forever labelled as the class of 2015 who decided that democracy was inconvenient and that an erosion of labour statutes should ensue because of that.

I don't think we could express our concern any more than we already have. We're giving you an opportunity, as well, to make these changes. Send an email right now. You've all got BlackBerrys ready to go. Fire off a quick email. Say, "You know what? They're making some sense in the committee. They're actually giving us some information that makes sense." Because I can't see it any other way. I can't ever, and will never see the democratic process, the right that's enshrined in the charter, to choose to not only join, affiliate with and choose your representation—I can't ever and will never see that as a barrier, as a burden and as inconvenient.

I'll tell you, I'm ready to fight you on this and I know that there are thousands and thousands of others—not

even activists, just people who believe in and understand democracy—who are ready to do the same. Obviously, the government is willing to take on that fight. They believe that the time is now, at the beginning of their mandate—not even midway through it—and that we'll forget about this. I'm here to tell you today that it will be impossible, and it will be enshrined in the institutional memory of those who are affected.

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This doesn't deliver greater patient care in hospitals. It doesn't deliver greater levels of service in other sectors that are affected. What this solely does is expedite and eliminate the process. By expediting it, you quash the rules, you quash the law, and you launch us, then, into a legal battle that's going to be costly. We saw in the AG's report that there really isn't any regard for cost overruns as far as this government is concerned. Money seems to be everlasting and at your own discretion to waste or to spend in any way in which the government sees fit—without any diligence, given the evidence. So that's what we can expect. This isn't something that's novel or an insightful premonition. This is something that you can wholly expect.

But you're not paying the bill; you're not paying the tab. You'll probably never see the lawyers' bills and it doesn't really affect how many Christmas presents you're going to buy for your family members this holiday season. It will be coming directly out of the pockets of the citizens of this province. You'll justify it by saying, "Look, we had to do this because democracy was getting in the way of the mergers that are ongoing and are proposed. Democracy was indeed a barrier, an inconvenience."

I would love to hear—have we heard anything from the government members today on why—

Mr. Randy Hillier: Silence.

Mr. Taras Natyshak: It is silence. I would love to hear that. I would love to hear that. I know I would actually try to find a sub for my House duty just to sit here to hear some justification around that, because it's a really hard argument to make. It would take a lot of guts to stand in this place, in a place that is challenged and is honoured to maintain and to protect the democratic institutions which our laws oversee. It would be hard; it's going to be hard for you to do that. But I look forward to you doing that. It is, in fact, your obligation to do that, to make a critical argument on which you decide, as members of the government, to quash democratic rights to bargain, to negotiate and to join a union, ultimately, because that's what unions do.

Another interesting question: How long has it been since members of the opposition have been members of a union, and did you actually see any benefit in joining a union? Do you even value the fact that workers are represented? It's one of the aspects that I know gave me and my family the ability to raise a family. It gave us economic security and stability. I've been a member of various unions. Some I was a member of when I wished I would have been a member of others. Some I didn't like the quality and the level of service, and would have loved to have potentially had another union represent us. It would have been my right to do that. You're taking away that right, absolutely telling people that this is the ship that they'll have to sail on, whether they like it or not. You're backing yourselves in a corner that I think is going to be hard to squeeze out of. I'll make it as hard as I possibly can, and I know that those who believe and trust in democracy will do the same, as they always have.

I come from an area of the province in Windsor where labour rights are valued. They're protected and supported and were indeed won. The Ford general strike gave birth to the Rand formula. Do we all know that? The Rand formula gave unions the ability to collect dues from the employees to be represented. That's wonderful. Is that what's next? Are we going to have an attack on the Rand formula? We can't tell anymore what this government's going to do.

At one point, we thought that they weren't going to sell off Hydro One, but now they've adopted the Conservative mandate on selling off Hydro One, and so we see that happening. Is right-to-work legislation next for you guys? Can we expect that coming down the pipe? Because we cannot tell anymore where the Liberal Party of Ontario is ideologically. You say that you believe in progressive values, but at every legislative turn we see a degradation of that. Stand up for what you've campaigned on. Stand up for the principles in which you claim to believe, do the right thing here and pull this schedule 2 away.

The threshold model—again, 60% of the given workforce. What about the other 40%? That's a big number. That's a large amount of people that have ultimately chosen to be represented by another union, obviously, and may be very, very happy with that representation, and have developed relationships. Those union representatives know who they are, know who their families are, know their individual condition, know their individual needs, and you're going to just blanket steamroll over that whole long-standing relationship with this provision.

It's another aspect that I don't think the government has given much consideration to, and one that I wish they would. Even if you have—if you don't see it the way I do, I'd love to hear why. I'd love to hear whether you place value on those long-standing relationships between workers and their given, and chosen, representative.

I've met lots of people who are anti-union. Jeez, I even work alongside some of them most days of the week in the Legislature.

Mr. Randy Hillier: That's not true.

Mr. Taras Natyshak: Well, listen—

Mr. Randy Hillier: That's not true.

Mr. Taras Natyshak: Let's not go that far. Okay.

Mr. Randy Hillier: Let's not go overboard.

Mr. Taras Natyshak: I see the right to join and participate in a union and to bargain freely and collectively as akin and similar to the right of you to choose legal representation, should you need legal representation,

because ultimately, that's what it is. Even though you're not hiring lawyers, many—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. Your declared 19 minutes and 59 seconds has expired.

Mr. Taras Natyshak: Chair, I can come back again—

The Chair (Mr. Shafiq Qaadri): You can, after I offer the floor to others.

Mr. Taras Natyshak: Oh, I can't wait to do that.

The Chair (Mr. Shafiq Qaadri): And it could be from the NDP, incidentally, but in any case, the floor is now open. Any takers? Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. I was absolutely confident and positive that Cristina would have jumped in, because we haven't heard her speak to this bill yet. I know that she must have things she would like to share—

Mr. Mike Colle: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Colle, a point of order, which I think I can anticipate. And yes, Mr. Hillier, I'd respectfully invite you to call people by their names—

Mr. Randy Hillier: Oh, pardon me. Cristina Martins.

The Chair (Mr. Shafiq Qaadri): Ms. Martins—

Mr. Mike Colle: No, by the riding name. That's the usual procedure.

Mr. Randy Hillier: Not in committee.

The Chair (Mr. Shafiq Qaadri): Well, here, it's fine. "Ms. Martins" is fine. But if we could just preserve some of the formality—

Mr. Randy Hillier: Yes. If we had a seating plan here with the riding names, I'd be happy to use that as well.

However, Chair, I want to just add—we've talked about the constitutionality, the lawfulness. We've talked about a number of things, and we haven't had any response. I just want to put one other thought out for the government members to consider, and that is that presently, if there's more than one bargaining unit, if there's more than one trade union in a workplace, there is clearly—and I think you'll agree with this—competition there. There is competition between unions to provide the highest level of service and representation and advocacy for their members. There is an inherent, innate advantage when people have choice. We see that in all facets, in all matters of our everyday life. Just because one union is bigger than the other, it doesn't mean that it necessarily provides better service or that everybody would want to go there. As an analogy, I'll use Walmart, which is the largest retailer in the province, but we don't all go to Walmart, nor do we want to use legislation to exclude all other competition and just allow Walmart to be the only retailer in Ontario.

1510

But that is what is happening with schedule 2: We're saying, if you're the biggest today, this legislation will enshrine and protect that by eliminating competition for representation in the workplace. Of course, we know that if there is no competition, then there is no incentive to improve. Doing this, allowing this to happen in this fashion, where the predominant union in a workplace would then invariably—inevitably—become the only bargaining unit in that workplace, would ensure that there is no incentive to improve, no incentive to represent professionally or proficiently. We would see, I think, in due course, in a period of time that the calibre and the quality of representation would diminish.

I can't believe that the members—I can't believe that Mr. Berardinetti, or Ms. Martins would want to see a diminishment of proficient, professional representation of employees by their unions. But that inevitably would happen.

Again, we wouldn't allow this under any other circumstances. If we look at any other aspect of society, we aren't—or hopefully we're not—going out and purposely limiting competition, purposely excluding people from engaging in the marketplace of ideas, and the marketplace of representation. We want to encourage more and more people to be involved in that marketplace, not less and less.

Again, we've now gone through a number of cycles. We're still not hearing any defence, any justification. I'm sure it must be grating and biting of tongues wishing to be able to speak to this bill, but clearly the government whip is not on the backs but on the mouths of the Liberal members today, preventing them from having a voice, preventing them from a discharge of their duties, a discharge of their responsibilities.

Surely, I can't imagine that there's any member on the government side who doesn't have unionized members as constituents, unionized members on their local riding associations, local unionized members who come in seeking support and advocacy for collective bargaining rights. You must all have that.

I'll just make reference to a member from the third party, Mr. Natyshak: This is not about union-hating or union-liking or—and contrary to the misperception, I myself was a member of the International Brotherhood of Electrical Workers. My colleague Mr. Arnott was also a member of a union.

Mr. Ted Arnott: The United Auto Workers of Canada.

Mr. Randy Hillier: The United Auto Workers, yes. The United Auto Workers is a good thing for me to raise here at this time. We all know that—and Mr. Colle referenced Jerry Dias's comments from Unifor. Unifor is a merged union. They were merged from the communication and power workers' union and the Canadian Auto Workers not that long ago. I believe the communication and power workers' union was the larger of the two unions. Now, of course, they represent people over a wide breadth of workplaces, but all members of both unions chose who was going to be their representative. They chose to amalgamate those two unions, freely, with a secret ballot, and they chose to create Unifor.

I find it quite ironic that the head of that new merged union, Jerry Dias, would find that voting is a disruption and ought to be limited. His own union would not be in existence had it not been for members—employees—

freely choosing which bargaining unit. I wonder if Jerry knew which bill he was supporting when he wrote that letter to you, Mr. Colle, because, as I said, his union would not exist if it was not for a free vote by all members. It was not a case of, "Well, CAW members, you're a smaller union. We're just going to demand that you become part of us." They said, "We welcome that interchange, that interaction, that discussion, and we know that when you have a forthright, honest discussion, even though there may be some confrontation and there may be some concerns, at the end of the day, a better outcome is achieved by having a forthright, honest discussion and a process that recognizes minority rights."

It's clear to me that there's something else at play here by the Liberal government, which is both demanding that there is no demonstration of justification and this willingness to pummel and trample minority rights with schedule 2. There must be. What it is, we can only suspect; we can only infer. I've put out a few ideas of what it may be. There may be others that I am unaware of, but I would be happy to hear what some of those underlying motives are that are hidden from our view and that the Liberal members are refusing to divulge. I'd love to know what they are and I'm sure, at some point in time, we will understand what those motives are and how dark they may be that they don't want them to have any light shed on them and therefore are willing to be absolutely silent. Thank you very much.

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

Ms. Catherine Fife: Thank you, Chair. Indeed, this is an important debate to be having. Obviously, we feel very strongly about schedule 2. We feel strongly about Bill 109.

I have to say, it caught us by surprise that this schedule was contained within this bill. For us, it's a poison pill. That should not surprise this government in any way, shape or form.

I just keep going back to the promises of this government during the last election: governing from the activist centre; putting evidence over partisanship; putting policy over politics; thorough consultation; being truly inclusive of people as policy and as legislation is crafted and developed; and putting people first.

This is the antithesis of that rhetoric. I have to say, I'm thinking that that activist centre is feeling pretty uncomfortable for some people who I regard as progressive people on the government side of the House, who I know have been part of unions and who have been part of the union movement, particularly women who, when you look back at the history of the union movement and how child care was championed in those workplaces, how pay equity was championed in those workplaces, how the rights of workers to work in safe working places, how the rights of women to actually work in workplaces without sexual harassment—so this activist centre is becoming more and more convoluted.

1520

At the time, during the election, the word "progressive" was used quite liberally, one might say. I have to say that this party is actively redefining the word "progressive." I can actually sense the discomfort that some government members must have on this schedule. I think when we talk holistically and practically about minority rights in the province of Ontario, that it is so important for us who are elected, who are one of 107 legislators in this place, to always have the minority voice at the centre. That's where the activist centre should be. It should be those people in our society who do not have voices. Unions, throughout the history of this province, have given voice to those who do not have power.

What is happening in this committee today, as we try to convince the government to rethink and to completely pull back on schedule 2 of Bill 109, is really, essentially, an exercise in speaking truth to power. Personally, I wouldn't miss this opportunity for anything. I think, as uncomfortable as it is, it is important for the government side of the House, our colleagues, to hear how strongly we feel about schedule 2. I hope that government members go back to their respective ministries and their respective staff—the Poli-Sci 101 staffers who seem to be running the show around here—and tell them very strongly, unequivocally, that schedule 2 is unconscionable.

As the finance critic for the NDP, I have to ask, what is the cost? What is the cost of actually ensuring people have their democratic right to choose their union? Is there a financial cost to this government? Is there a financial cost to society? Is there a financial cost to the members? No. But there is a cost to not ensuring that democratic rights are upheld.

The flip side of this, of course, is that the government is knowingly, intentionally, setting themselves up to go to court. I was warned in the House this morning because of a comment that I said about when we are consulting, when the government—the government does this often. They speak very glowingly about their relationships with First Nations. There are more court cases right now in our courts against this government, especially as it relates to the—it's called the Ring of Fire, but we are commonly starting to call it the ring of smoke, because nothing is happening in that regard. That's where this government is meeting First Nations people, and yet knowingly, if you look—even since the 2014 election, we have seen challenge after challenge, whether or not it's through the collective bargaining rights of the public sector unions, of teachers, of front-line nurses, of education workers, of personal support workers. This government seems complacent in the level of oversight that they wish to hold around democratic and collective bargaining rights. It is a disturbing trend.

I just want to acknowledge that I know for a fact that not all members feel that this is in the best interests of the province and in the best interests of the Legislature, and certainly in the best interests of those who work in the health care and education sectors.

I want to put it on the record, because we've sought legal opinions, as well. We've sought research. We've used the excellent expertise of the legislative library and

research services. We've relied on some very strong unions who truly do want to put evidence above politics. We have an opinion here and I want to read it into the record, as it relates to the impending constitutional challenge of schedule 2.

This is what is going to happen:

"In removing the right of workers to elect the union of their choice, Bill 109 would not only conflict with the stated purpose of the Labour Relations Act, 1995, and the PSLRTA, it would contravene the freedom of association provisions of the Canadian Charter of Rights and Freedoms. Three recent rulings of the Supreme Court of Canada have firmly established that freedom of association under section 2(d) of the charter not only protects the right of employees to establish, belong to and maintain a trade union, it also protects the rights of workers to join the trade union of their choice."

We have guidance. It's frustrating, obviously, for us. We're the third party. We try to bring ideas to the table. We try to bring constructive suggestions to the table and to the debate. To just hit a wall, for me, is one of the most frustrating things I've ever experienced. When I did come in, in the minority government setting, I found these committees to be so much more productive, in that there had to be a give and take and there was a genuine interest to sometimes find consensus. When there was disagreement, there was a concerted effort to actually listen.

This is our job in the third party and the official opposition: to bring the dissenting opinions to this Legislature and to this committee, but also to inform the debate and to make sure that the legislation does—one of the tenets of social work is "Do no harm." At least do no harm.

I know that you are all reeling from the Auditor General's report. I have to say, as the finance critic, I'm still working my way through the numbers of that report, but the numbers are astounding. It's true that people get upset when politicians buy a $16 glass of orange juice, but these numbers are so big. We are in a place right now where the Auditor General from the last report that she delivered said we are going to get squeezed on delivering basic public services to the citizens of this province. That is where we are right now.

So why invest this kind of energy in bringing forward a schedule that actually will cause harm and will cost our democracy and cost the citizens, the taxpayers, stakeholders—whatever you're calling them these days. For me, it makes no sense whatsoever. That's why we're fighting this. That's really the only reason that we are doing this.

When I think of the priorities of where we are right now in the province of Ontario—and I have to say, there's no huge push for this. This didn't come from any union; this didn't come from any stakeholder. In fact, this was not even being driven through the ministry. This is just a knife-in-the-back sort of schedule.

When I think of the priorities that the Ministry of Labour should be focused on right now—for me, it's hard not to go back to the work that we've been doing over the last three years, ever since Nick Lalonde fell to his death in my riding. The young man was working on a building and he fell. He didn't have a harness on; he didn't have the training. The contractor in question had a questionable history of protecting the rights of workers and informing and training those workers. When I think of what should be happening from a Ministry of Labour perspective, there are so many other issues that we should be championing right now.

Ironically, it's the five-year anniversary of the Dean report. If you recall, there were multiple recommendations from that report. All of them have not been brought in. Working at heights actually has come into play. It rolled out on April 1, 2015. I think, for the most part, the industry is receptive to it. It did take a long time, I have to say. One of those recommendations is still Dean's recommendation 14, which says mandatory entry-level training is to be in place before January 2012. The minister's Chief Prevention Officer is almost three years late on that.

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Dean's recommendation 13: that mandatory training for health and safety reps be in place by January 2012. Again, they're falling far behind with that.

Not to point out all the things that are not happening, necessarily, but my point is that there are other places to invest your energy and to make sure that workers and their rights in the workplace are actually being upheld. When I think back to this place, I think of what this place and what Queen's Park actually means to the people of this province and especially those workers who rely on us to speak for them—they do.

When I think back to when I first started coming back here a long, long time ago, 1997, 1998—

Interjection.

Ms. Catherine Fife: And that was Bill 160, yes. I used to work across the street at the old Toronto Board of Education and I used to come over on my lunch hour to watch question period because it used to be in the afternoon. That's when the amalgamation was happening. With that amalgamation, it was the first time that I actually had to fight for my right to be part of a union because I was a unionized worker when I was doing some settlement work with new immigrants back in the late 1990s.

The original Bill 160 really activated a lot of people, I think. I always thank Mike Harris for getting me so angry that I got off the couch. That merger, though, left this whole process, which is exactly what workers would be going through with this piece of legislation, except if schedule 2 passes, the large union, the one that has 60% of the members, wins automatically.

I just want to tell you what I learned when I went through that process, because I think I was an OSSTF member and then a CUPE member and a CEP member. We got to choose, and so we went to those unions and they had to make the case for membership. So they said to the women in the union, "You know what? I know that

you only make 70 cents on the dollar and this is a priority for our union." One of the other unions came to us and said, "We really do value worker safety. We believe in professional training and we believe in educating our workers so that raises the bar in that particular field," especially as I was doing settlement work and there were a lot of risks attached to that.

So that was the process. I learned so much through it, I have to tell you. Not only did I learn about what kind of union I wanted to be part of; I decided that I wanted to be part of that union and make that union a better place. That was the learning from that process.

The fact that no consultation on schedule 2 has actually occurred speaks to the duplicitous nature of this language around respecting workers in the province of Ontario. Taking away the democratic rights of workers in an amalgamation or a merger if they have less than 40% representation is fundamentally undemocratic. There is no other way to describe it.

I mentioned that five-year anniversary of the Dean report and the swing stage workers who fell to their deaths and how long it has taken us to actually ensure that those lives and the tragic deaths that were preventable—the ensuing legislation has been slowly put into place. The democratic rights of union workers—you have to remember that every single win for every single worker in the province of Ontario has come on the backs of workers before them, and have come through protests and through rallies and through court challenges.

Schedule 2 runs counter to and is a direct contradiction to everything that the Premier of this province said to the people during the last election—every single thing. There is nothing progressive about ensuring that 60% of the people get to choose what the other 40% can be represented through. You can't argue it. You can't defend it. It's indefensible. It shouldn't even be in this bill. There is no rationale for it. There is no call for it. It is just a capricious piece that's embedded in an omnibus bill which has become more and more common for this government to throw at us so that they can, you know, bury these poisoned pills and squeeze us in a political way so that we're voting against some good measures in the bill—because this is not supportable. Schedule 2 needs to come out in its entirety. I would support any member of the government side of the House if they had the courage and the backbone to stand up, speak out and ensure that schedule 2 is not part of Bill 109. Honestly, we would welcome anybody from that side of the House to just do the right thing.

As I've said, this is going to go to court. It has to be challenged. It is such a fundamental stripping of worker rights that it must be challenged. You will see union after union stand up, but hopefully it's not just unions, because this will affect future worker rights, period. If the government can bury a piece of legislation, a schedule such as this, in an omnibus legislation like that, you are basically opening up the doors to challenge the rights of workers on every level, from pay equity to worker safety. You are fundamentally changing the way that we will operate as a province. That's how big this is.

Because we fought so hard—so hard—to get the rights of workers to choose their union, to go through a democratic process, it is a fundamental betrayal of democracy. And you will lose; it is going to go to court and you will lose. You will have wasted tax dollars and time when you should be focused on the labour relations issues that have plagued this government and will obviously transfer into the future.

So the minority rights conversation needs to be championed. It needs to be championed by somebody on the government side, because clearly the Premier has checked out. This activist centre that the Premier ran on in the last election, where apparently there's a banker right in the middle of that centre, deciding that public assets no longer are needed by the province and looking for quick cash—one only has to go through the Auditor General's report. I mean, everything from economic development and employment programs—I can't imagine having to stand up and defend any of this that was in the Auditor General's report, Chair. I just can't imagine having to stand in my place as an elected representative.

The only thing that I could say is that there are some new progressive people who were elected in the 2014 election who must read this and just have their eyes wide open. Clearly for a long time, there have been people in this government with their eyes squeezed shut and just looking the other way on everything from child protection to the environment to the fact that this government has been giving out billions of dollars to businesses across the province and then never doing the financial analysis as to whether or not that money translated into good jobs or a positive economic impact.

On the issue of protecting children, it's five years now since the last Auditor General's report, which clearly said to this government, "You need to get your house in order. You need to get that database of keeping track of where children are, who has come into their lives and who shouldn't be in their lives." That was a contracted-out job that went to a company that has continually failed this government. Yet they still keep getting the same contracts, those contracts continually go over budget and that work is continually not delivered on time. Yet, for some reason, the minister can stand up and say, "Well, this is just a little glitch." This is not a glitch; this is a broken system.

So, with all of these other issues, with those 774 pages that the Auditor General has given to this government, we fundamentally believe that the government has a responsibility to listen to that auditor this time. We are obviously going to hold the government to account in any way, shape or form that we can as the third party to ensure that those recommendations just don't flip back to us in another year or two.

But the issue of schedule 2 is so out of place. I mean, this is really the fundamental piece. This doesn't fit in this bill. This doesn't fit in the mandate letters that the Minister of Labour received—

1540

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife. The 20 minutes has now expired. The floor is now

open to any other member, including members of the NDP.

Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair, for recognizing me. I thought you might have recognized one of the Liberal members, but clearly, once again, they've chosen the cone of silence as their best means to defend this bill.

I just want to advance one more analogy and one more argument for the government members to consider, regarding schedule 2, and that is that recently—just this week—we passed Bill 115 at third reading. Bill 115, although it deals with electoral boundaries, also deals with mergers and acquisitions, in a sense. As we know, with Bill 115, the riding boundaries will change on a host of ridings, and there will be new ridings established. Just to give you an example, in my riding of Lanark–Frontenac–Lennox and Addington, it's going to be altered to Lanark–Frontenac–Kingston.

In Bill 115, and with the electoral act, we're obligated—mandated—that when there's a new boundary change, there's a new riding association established, and it's done through votes.

In my particular case, the existing component of the new riding will be about 80%, and then we have about a 20% geographical area which will be incorporated as new. If we were to use the same formula as what's included in schedule 2—if that was the same framework—then that 80% of the riding could just say, "Tough luck. We're not taking any view or any consideration or any vote from new people who are now part of the new riding association." Of course, I would never do that. I'm a strong proponent and advocate for people to make choices, and also to allow people to ventilate and express their ideas and concerns.

So I find it interesting that in the same week that we pass Bill 115, which is consistent with established democratic principles of electing and choosing to elect representation—and all parties supported that Bill 115—the same week, the government is trying to pummel and trammel and trample upon the rights of the minority when they're involved in a collective bargaining arrangement instead of in an electoral riding redistribution. It's thoroughly and completely inconsistent.

Once again, I'll put it out to the Liberal members on this committee: How can you support Bill 115 in the same week as you're trying to vote in favour of schedule 2 of Bill 109? They're completely, completely contradictory to one another. I'm sure the insides must be in pretzels right now, trying to untie this Gordian knot that they've created for themselves with schedule 2. Really, anybody who knows about Gordian knots—the only way to solve it is to cut it in half. Get rid of it. Cut schedule 2 out of Bill 109. That's the only way that you can actually stand up and hold your heads high and say you've done the right thing, that you're consistent in your defence of the Constitution and consistent in your advocacy for freedom and for democracy; otherwise—everybody will see this—you're just bent over, twisted up, confused and don't know which side is up.

Again, Bill 115: What do you think would happen if you proposed this same framework in Bill 115, to disregard any participation, any election, any choice in establishing those new riding associations and just the larger, more predominant part of the riding would have its say and the only say and others would be compelled—compelled—to trample on those minority rights?

Again, I can see the likelihood of eliciting a response from the three remaining government members—maybe at this point we should call a vote, but the Chair is still here, so we still wouldn't win.

However, I will ask this direct question to Mr. Delaney, Mr. Berardinetti and Ms. Martins: Why won't you speak? Why won't you defend, or attempt to defend, this trampling of minority rights that you're so eager to have advanced with schedule 2 of Bill 109?

Do the right thing: Stand up and defend it, argue in favour of it or vote it down. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just for clarification, voting members on the opposition side include Messrs. Hillier and Arnott and Ms. Forster. The others are there for moral support.

The floor is now open for further comments. Mr. Gates.

Mr. Wayne Gates: Good afternoon. Thanks for allowing me to say a few words to allow people to have the right to vote.

I actually believe, of most of the people who are around that table and my colleagues, that I probably have the most experience of being an elected official in the union for 40 years. I'm very proud of that—

Ms. Cindy Forster: Forty-two for me.

Mr. Wayne Gates: Forty-two? Wow! I always thought you were a lot younger than I am. I apologize for that, then. I'm not getting into that one; I'd be in a lot of trouble. But at the end of the day—

The Chair (Mr. Shafiq Qaadri): You are welcome to correct your record, Mr. Gates.

Mr. Wayne Gates: Very good. I appreciate that.

But I think it's important to talk about people having the right to vote. I can tell you that I started in General Motors—I'll say this quickly—in 1973. It was 20 years after the Leafs had won the last Stanley Cup.

Having said that, I went into a workplace that was unionized. I'm very thankful for that. They paid what I would consider, certainly, fair wages back then. I can tell you, at that time, I was making—you guys should listen to it, especially the young people who are here, especially the staffers who are here and the young guy at the end there—$4.83 an hour when I started in General Motors.

At that time, that was a lot of money. It was my first job. I walked into a unionized workplace—very thankful of that, by the way—and I started to get interested in the union—

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, can I just call to order the background conversations all around and give Mr. Gates the floor? Go ahead.

Mr. Wayne Gates: Thank you very much. I appreciate that, Chair.

I started to get interested in the union after I had been there for a couple of years. I said, "How do you get involved with the union?" They said, "Well, you can run for a position. You can run for the recreation committee or the education committee." But you had to run for everything, for those who might not know—particularly, maybe, on the Liberal side—who are struggling with this. That meant that you could put your name into a box. There's an open period for an election and you put your name in and you can run for a position.

1550

Those who don't know me well—I know there's a few here who may not—I was a sports nut. By the way, I still am. I'm broken-hearted that the Jays didn't sign David Price.

Mr. Mike Colle: I'm not.

Mr. Wayne Gates: But having said that, one of the first things where I thought I could really get involved with the union was the recreation committee and run some sports events, whether it be to a ball game, a hockey game, a lacrosse game. I said, "Okay, so what do I have to do?" Well, you put your name on the ballot, and once the opening period is closed, the membership gets to vote. I thought that was pretty exciting. I had only been there a couple of years. I put my name up. Unfortunately for me, a number of other people wanted the recreation committee because it was a very high-profile job in the plant, because you're running the Christmas party, and the Christmas party meant that you're giving—well, Santa Claus I guess was giving the gifts out, but they were getting gifts, going to see the Sabres play. The first time I ran, I lost. I know a lot of people are going to be surprised at that, but I did lose.

Interjection.

Mr. Wayne Gates: No, it was a vote and I was fine with that. The membership in the plant—at that time there were 10,000 people working there—had the right to vote for me. I went around and introduced myself to a lot of people who didn't know me, because I was a relatively new hire at that time. I said, "I'm Wayne Gates. I'm running for the recreation committee. I love sports. I play hockey. I play ball"—none of them well, but I played and I enjoyed it. But unfortunately, I didn't get the opportunity to win that particular election.

But the key there is the membership chose whether they wanted Wayne Gates or they wanted somebody else. In that particular election, they chose somebody else. Now I wasn't heartbroken. It was my first time running. I got my name around the plant. But again, they had the opportunity to vote.

Over the course of the next little while, I stayed active. I went to the membership meetings. I went to the unit meetings, and because we were an amalgamated local, they used to have unit meetings for the other units. At that time there were 22 units of Local 199. So they had the General Motors unit, which was extremely big, by the way, and then they had some smaller units, like dealerships, credit unions, small manufacturers. So I would go there to try to get my name out and my face out, because they had the right to do that. They had the right to vote for who they wanted on some of these positions.

So that's what I did. I got my name out there and my face out there. Guess what I did the next time there was an election? Anybody know? Maybe the Liberals can help; it's an easy one. My good friend Mike might know. I ran for recreation again. Does anybody know what happened?

Mr. Ted Arnott: You won.

Mr. Wayne Gates: I absolutely won, and I was thrilled to death. I started running the Sabres trips and running the ball games to see the Blue Jays games. But, again, the key to it was that the 10,000 people who we had working at General Motors there at that time and the people from the small units had the right to select who they wanted or the right to vote for who they wanted on the recreation committee. Then we had a vote to see who the chairperson of the recreation committee was going to be. Again, the key to that is, they're always able to vote. It wasn't that only 60% of them could vote or only 40% of them could vote or, in our case, just the people from GM could vote. Everybody in the small units had the right to vote.

So I think that's pretty interesting. Now, I've got four or five years of seniority. I'm on the recreation committee. It is high-profile. I enjoyed it. Then I thought that maybe I always considered myself a bit of a strong voice for workers and my co-workers. I decided to run as a committee person. People here might not know what that is, but that's a person who would get elected, again by the membership, and if you had a problem between the supervisor and yourself, you would call your committee man. He would meet with the employee, talk to the employee and say, "What's the issue? What's going on?" Then he would meet with the supervisor with the employee and try to resolve that dispute.

Now, the first time I ran as a midnight shift committee person—because the plant was so big, we ran three shifts, 24 hours a day. And I ran. It was the same process again. A notice goes up for seven days. It's then taken down. The box is open for seven days and then the vote takes place. But the key again is that everybody gets to vote. Whether you win or lose, at least the membership gets to choose who they want for a committee person. Not 40%, not 30%, not 10%, not 5%; everybody in the plant, all 100%, get to vote. I'm glad to say in that particular election, as a back shift committee person, I won. I was a little surprised, by the way, but I won. I ended up being the off-shift committee person, midnight shift committee person in the components plant on Ontario Street in St. Catharines.

At that time, we had about 3,500 employees and I would represent them on midnight shift. Again, it became relatively high profile because what was interesting about that midnight shift was that I had the opportunity to represent production employees, something that even my colleagues would understand. I also had the opportunity to represent skilled trades, whether it be electrician, toolmaker, millwright—and I was a production guy. I

was never a skilled trade guy, but that was part of it. They had the right to vote for their midnight shift committee man, and I was very thankful that they voted for a production guy to represent them.

But I want the other parties to hear that through this whole process—because this is what the issue is here today in the bill—they had the right to vote. Again, you're going to hear this a lot from me over the next little while: not 10%, not 20%, not 60%; everybody in that plant had the opportunity to vote for me as the midnight shift committee person.

I know everybody's going to be excited about this, as I look across and look over here. I stayed as the midnight shift committee person, elected with the same process, for 20 years. That meant the membership, even though it declined a bit through the years, unfortunately—I was able to stay on that job for 20 years and, much to the chagrin of my wife, I worked steady midnights for 20 years. I can tell all the women here are pretty excited about that, but at the end of the day, I stayed on midnight shift for 20 years.

I did it for a few reasons, by the way. One, I was a midnight shift committee person. I had the opportunity to work days every other week and then be on midnight shift—I only did it every other week because we switched—but I stayed on steady midnights because I coached both my daughters' baseball teams for about 16 years and, I'm happy to say, winning a couple of all-Ontario championships, because they had a lot of good players, including both of my daughters. So I stayed on midnights for that reason.

But to stay on midnights for 20 years, Chair, this is what I had to do. Every three years, they had to have an election, so the process had to be the same again. They put a notice up for seven days in the plant that there's going to be an election. It's usually held in May or June. You have seven days to put your name in, whether you want to run again or not run. I put my name in every three years. In that seven-day open period, I put my name in, and then seven days later—so the election had to happen within 21 days, seven, seven and seven. I put my name in, and I can say that I won every single election for 20 years.

I always thought it was because I was doing such a great job. Everybody liked me, right? I mean, that's what happens when you get elected. We're probably like that now. Well, what I found out over the course of my career was it was because nobody wanted to be a back shift committee person and nobody wanted to work midnights. So it really wasn't me, but that's how I kept getting elected. They said, "If Gatesy wants to stay on midnights, we'll keep voting for him." I can tell you that I enjoyed it, but then I wanted to do something different.

During that process, again—because I want everybody to hear this, particularly the Chair, because I think it's important: Every single time, the membership in that plant, 100% of them, had the opportunity to vote me in or to vote me out.

I actually enjoyed it, and I thought that I had more to offer to my local union and to my community. I wanted to be a little more high profile in the union, and there are steps to do that. Normally, you'd go to run day shifts, become a shop committee man and do all that. I wasn't one of those who wanted to wait my turn to move on, so I decided what I would do was I'd go from a back shift committee person to president of my local union. It's a little bit of a jump. It was never done before, but I tried it and the same thing happened. There is the process, that 21-day process. I had to put my name in, and then, 21 days later, I get in and now I'm running for the president of my local union.

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At this time, there were around 7,000 or 7,500 members, plus another 21 small units. So what I had to do is gain the respect and the support of the 21 units, plus the General Motors unit, and you do that by going to the gates, handing out leaflets and talking to the membership. But the key to this was that, in all those 21 units, even though I was coming out of General Motors, they had the right to vote for their president.

The other part that was interesting in the labour movement was that when you become an executive board member—I don't even know if they did this with Cindy—the retirees of the local union had the right to vote for their president, because the president helps bargain the collective agreement in the GM unit and those benefits that we fought so hard for. So I had to make sure I got to the retirees. At that time, we had about 5,200 retirees. We had a lot of retirees, another 7,000 in the plant and about another 2,200 or 2,300 in the small units.

I went around, I got my name in and I got on the list. A lot of people thought it was pretty funny that I was trying to go from back shift to president, but at the end of the day, everybody had the right—again, all 100%—to vote. Not 10%, not 20%.

The other thing that was interesting was that the GM people voted for the president, all the small units like FirstOntario, the dealerships, the manufacturers, Brunner and Iafrate—that membership had the right to vote for their president—and the retirees had the right to vote for their president. This was in 1997. I remember it like it was yesterday. Time flies.

I ran for president and I won. I went from back shift man to president. I ended up being president of Local 199 for 12 years—with really no interest to become an MPP, by the way. It was not what I wanted to do. But I wanted to be a strong voice for the auto sector. We were losing jobs. Free trade really affected us. The dollar was an issue.

But the key there is that I had to run again every three years. So every three years I had to run again to become president; right?

Mr. Randy Hillier: Even if you got 60%.

Mr. Wayne Gates: I'll tell you what I got the last time I ran. I don't remember what I got in 1997, but I know that the last time I ran for president—again, with the entire membership voting, and you guys are going to like this, because it was amazing to me—I got 97.9% of the membership, and probably 10,000 people voted.

Ms. Cindy Forster: Very good. With only two running?

Mr. Wayne Gates: There were two running. Most people thought there was only one.

But at the end of the day, the key there was that people have their vote. I really want my colleagues on the Liberal side to listen to this, because it's important. It's important to the membership to feel part of the union. It's important for them to know that they have a say in the leadership they're going to elect, the union they're going to have represent them.

They took great pride in the fact that they'd line up before they started their 6:30 morning shift—6:30 at that time; sometimes it used to be 7 o'clock, but now it's 6:30 in the morning. They would get there early. They would get out of bed early and they would get to the plant at 5:30 in the morning so they could cast that little vote, that vote that's going to determine who is going to be their back shift committee man, who is going to be their day shift shop guy, who is going to be their day shift committee person, who is going to represent them on the benefits side when it comes to benefits and who could be the president.

There was never, ever a number so that only a certain group could vote. "Guys in the cleaning room, sorry, you guys can't vote. Guy over here, sorry, you can't vote. It's only this select group of 60% who can vote to determine who it's going to be." It was always 100%. I don't understand why we are trying to have a 60% rule here. I believe that everybody should have the right to vote.

The other thing that I always thought as president of my local union—because it does happen in the labour movement; I'm sure my colleagues know this, and I'm sure the Chair knows this—is that sometimes, during an open period, the membership can get rid of their union. Who is going to represent them? If they're not happy with the representation and they have some issues with the representation, they say, "You know what? I don't want to be with a union. I don't want to be with that union. I think this union over here may be better for our membership." But guess what they get to do? They get to vote on that decision. That decision is done by a vote of the membership. Not 40%, not 60%, but 100% of that membership has the right to vote during the open period on whether they want the union, and what union they want to represent them.

I want to say to the Chair, very clearly, that as president of my local union, one of the things that I always took great pride in was representing my membership, getting back to them every single day and returning every call that day. I always said that if the membership doesn't want me, they should have the right to vote me out, because they elected me to provide a service and if I'm not providing the service, then they should have a right, during the open period, to get rid of me.

I'm proud to say this: For the 12 years I was president of the local union, nobody left, and nobody wasn't happy with the service we were providing. I had one merger. After I left as president, there was a merger between St. Catharines Hydro and Horizon, I believe it was, up in Hamilton. There was a merger between the two groups. When they had the vote, they went to Horizon. Horizon did have a few extra members—a very close vote—but at the end of the day, what happened in that merger? Well, 100% of the employees had the right to vote for the union that they wanted to represent them. So it ended up being a union that the membership wants.

I think that's the problem that you've got with the 60%. Everybody should have a choice in what union should represent them. I say, with a great deal of pride, that I believe it was my responsibility to give every ounce of energy to the membership to provide a service to them, so that the issues that were important to them were being addressed—and not 60% of the membership. I wanted to make sure I was serving 100% of that membership, because 100% of that membership has the right to vote.

They had the right to vote for me in 1973, when I was going to be what I thought was recreation committee. Three years later, I end up winning that election—but 100% of them. Every three years after that—1976, 1979—I'm giving away my age here, but you get what I'm saying—1985, 1988, 1991, 1994 and 1997—every three years, I had to go back to 100% of that membership and say, "I'm the guy that you want. If you get in trouble in the plant or if you want to know something about your benefits, I'm the guy that's going to help serve you"—not 60%, but 100%. That's the problem here.

The other issue that I have with what's going on here—I'm really trying to be professional, because it really bothers me. I have extremely close ties to firefighters, for family reasons. They did an incredible job on saving my wife's life when a drunk driver hit her on Lundy's Lane, and they became really good friends. I became really good friends with them when I became a city councillor, including socializing once in a while with them.

What I don't understand in this—and I know you guys have talked about this and, unfortunately, it's the first opportunity I've had to come in—is why we are doing this to firefighters. The firefighter part of the bill is very good. You have the support of the firefighters right across the province of Ontario—

Mr. Randy Hillier: And all parties.

Mr. Wayne Gates: —and you have the support of my good friends from the Conservatives and my good friends from the Liberal Party. There are other issues that we need to address for them, and we all know what that is, and I think that's going to get done. But in this bill, the firefighters have come to the government and said, "This is what we need"—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gates. Just to inform you, any speaker is welcome to speak for 20 minutes at a time. That time has now expired. The floor is now open to any others, including members of the NDP, or Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair, for recognizing me once again. In my last round, I spoke about the

motives and that members on this committee, and members in the House, can't understand what the Liberal government's motives are for having schedule 2 in this bill. Of course, their reluctance, their total apprehension and refusal to discuss and put forth what their motives are, that leads to people having suspicions about what these motives are when they won't ventilate them, when they won't shed any light on them, by articulating and enunciating what these motives are.

1610

I have to wonder—because it is such a dramatic assault on democracy by the Liberal Party with schedule 2—if the Premier, on her recent trip to China, may not have taken a side trip to see Kim Jong-un over in North Korea to get some lessons about how to advance legislation and how to squash and stifle and suffocate the rule of law—

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I'd once again invite you to keep your totalitarian references to a minimum.

Mr. Randy Hillier: —only as they apply to government actions. I certainly would not stray beyond government actions.

But, clearly, where does this come from? Who planted this seed in the Premier's mind that the role of government is to trample upon and assault democratic rights? I know she has made a number of trips to China in her time as Premier. I think she also went on a few of those junkets while she was transportation minister and held other portfolios.

Again, without any rebuttal or any enunciation by the Liberal members on this committee, who seem willing to accept and to be silent and refuse to discharge their responsibilities and obligations in defence of their constituents, one has to again be suspect of where this idea and where this seed came from.

I suggested in earlier reference, from the public record, that there are significant financial contributions by a few of these unions to the Liberal Party. I believe the SEIU's was $85,000 last year. Is that a motive? I don't know.

I would love to hear the parliamentary assistant or any other member stand up, speak clearly and say, "No. This was not the result of political donations that created schedule 2. We would not ever advance legislation because somebody donated $85,000 or $46,000 to us."

The Chair (Mr. Shafiq Qaadri): Mr. Hillier, I'd once again invite you to observe parliamentary protocol without attributing these kinds of motivations, which is against parliamentary procedure.

Mr. Randy Hillier: Chair, I understand, and I'm really trying to pry out of the Liberal members on this committee just what the justification is. What is the motive?

I think you would recognize, Chair, if there was any response, if there was any justification advanced and put forth, then these suspicions could be allayed and put to rest. But their refusal to do so does raise suspicions in any reasonable person's mind. We know that shedding light in the dark corners exposes, and, when there's light, suspicions are removed and don't exist.

Apparently, the Liberal members on this committee want to keep certain things in the dark. They don't want to shed any light on their purposes. Maybe it's just the case that the Premier's office has instructed them to shut up, not to say a word, not to advocate for their constituents.

I would think that if this were happening in Ottawa right now or a few months ago in the House of Commons, every Liberal member, including the Premier of this province, would be railing about the tyranny of Stephen Harper muzzling his members, but here we see it happening in spades—not a word of justification, not a crumb of motivation; just darkness and silence.

I think, at the end of the day, whatever happens with this bill, every member of every organized labour group, every trade union, will be suspicious of just what went on here in committee room 1 examining Bill 109 with regards to schedule 2. Every one of them will be saying, "Can we trust these people? Can we have any relationship with any one of these, who will so overtly trample upon our rights at a moment's notice?"

I think it is certainly a grave and serious threat to our democracy, to our rule of law, and it will not go unnoticed. It will not go unnoticed. Every union member out there will know that five members on this committee chose to smack them down, to disregard their rights, and hide their motives while doing so.

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

Mr. Mike Colle: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Colle.

Mr. Mike Colle: I think that we've already voted on a different section of the schedule, and we've just spent, I think, the last three hours on the schedule itself. I think that it's very appropriate, after all this debate, to call the question and call the vote.

Mr. Randy Hillier: Chair, on each—

The Chair (Mr. Shafiq Qaadri): Just a moment.

Mr. Colle, are you asking that the question now be put?

Mr. Mike Colle: Yes.

Mr. Randy Hillier: Chair, there are people—

The Chair (Mr. Shafiq Qaadri): Just a moment.

Interjections.

The Chair (Mr. Shafiq Qaadri): Okay. Just to respectfully advise members of the committee that Mr. Colle has put forward that the question be put. This is to be, then, voted upon. It is not debatable—

Ms. Cindy Forster: Question: Can we get a 20-minute recess?

The Chair (Mr. Shafiq Qaadri): You are allowed to have a 20-minute recess.

Ms. Cindy Forster: Well, I'll ask for a 20-minute recess. Thank you.

The Chair (Mr. Shafiq Qaadri): But just to be clear, once we return, then we will be proceeding directly to the vote.

Ms. Cindy Forster: No, not on schedule 2. We'll be proceeding to the vote on putting the question.

The Chair (Mr. Shafiq Qaadri): Yes, correct.

Ms. Cindy Forster: And then we can go back to debate.

Interjections.

The Chair (Mr. Shafiq Qaadri): We'll be voting on Mr. Colle's point, meaning that the question be put, and, should that vote be successful, then the question will be put immediately after that, on schedule 2.

Ms. Jennifer K. French: I have a question, a point of clarification or whatever: If there are still issues that I wanted to bring forward, is it inappropriate for me to do so?

The Chair (Mr. Shafiq Qaadri): We're talking specifically, Ms. French—

Ms. Jennifer K. French: On schedule 2.

The Chair (Mr. Shafiq Qaadri): —of schedule 2, not the entire bill, the amendments and motions.

Ms. Jennifer K. French: Right. So while I appreciated my 20-minute opportunity earlier to speak to schedule 2—

The Chair (Mr. Shafiq Qaadri): There's actually—I'm just trying to allow much leeway here, but it's not actually allowed.

Mr. Randy Hillier: One further clarification?

The Chair (Mr. Shafiq Qaadri): All right, clarification.

Mr. Randy Hillier: We did not get to the vote on section 3 of schedule 2 yet.

The Clerk of the Committee (Ms. Tonia Grannum): There are only two sections to schedule 2. We've voted on those; we're voting on the schedule.

Mr. Randy Hillier: No, there's the—when it comes into effect—

The Chair (Mr. Shafiq Qaadri): Of schedule 2, there is section 1, which we've voted upon; there's section 2, which we have voted upon; and now we are considering whether schedule 2 shall carry, of its two sections.

Mr. Colle has asked that the question be put. As mentioned, that is non-debatable and to be voted upon.

Recess has been asked for by Ms. Forster. When the committee reconvenes, that question will be put. Should that vote be successful, the question then will be put, meaning schedule 2. Clear?

Mr. Randy Hillier: No.

Ms. Cindy Forster: Not quite clear. I don't understand—

The Chair (Mr. Shafiq Qaadri): Actually, I'm being re-advised multiple times by my Clerk that there is, in fact, no debate. I'm trying to grant as much leeway for questions—

Ms. Cindy Forster: If it's not debatable, I'm trying to find out the process. Perhaps you could explain the process to us, because I wasn't under the understanding that you could actually put a question under the standing orders while we were in the middle of debate and we still had members who wanted to actually debate an issue.

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

The Clerk of the Committee (Ms. Tonia Grannum): Mr. Colle had the floor, and when he took the floor, he asked that the question be now put. That is a non-debatable motion. He had the floor legitimately, he asked that the question be now put, so now we have to vote on the closure motion. If that does carry, then the next vote will be on schedule 2 and that question has to be put immediately as well. Once that has been completed, then we do still have the remainder of the bill, schedule 3 of the bill, and then we have to go back to sections 1, 2 and 3 of the bill.

The Chair (Mr. Shafiq Qaadri): Having said that, you are allowed and welcomed and have been granted the 20-minute recess, which commences—

Mr. Randy Hillier: Starts now?

The Chair (Mr. Shafiq Qaadri): —now.

The committee recessed from 1621 to 1641.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I'd respectfully invite you to reconvene, please. As you know, we have a closure motion before the floor, as proposed by Mr. Colle. As mentioned, this is a votable, non-debatable motion. We will proceed to that vote immediately.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote—

Ms. Cindy Forster: Recorded vote, Chair.

The Chair (Mr. Shafiq Qaadri): —has been asked for. I should just mention that, should that vote be successful, we will proceed to the consideration of schedule 2.

I will just advise my colleagues that you are entitled to ask for a recess of 20 minutes' duration before that vote.

Mr. Randy Hillier: Any vote.

The Chair (Mr. Shafiq Qaadri): Well, yes, any vote, but I'm speaking specifically at this time.

There's no other entertainment of any question on the floor. We will now proceed to the vote that the question now be put.

Ayes

Berardinetti, Colle, Delaney, Martins, Naidoo-Harris.

Nays

Arnott, Forster, Hillier.

The Chair (Mr. Shafiq Qaadri): Thank you. That closure motion does pass.

We now vote on schedule 2. As I did inform you—

Ms. Cindy Forster: I'd like to ask for a 20-minute recess, please.

The Chair (Mr. Shafiq Qaadri): A 20-minute recess is your prerogative, and 20 minutes begins now.

The committee recessed from 1642 to 1702.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I welcome you back to the continuing deliber-

ations on Bill 109. I'd respectfully ask that only MPPs be seated at the committee table. As you know, we've had a closure motion that has passed. We had a 20-minute recess requested, and that has passed. We will now proceed directly to the vote on schedule 2.

Ms. Cindy Forster: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

The question is now "Shall schedule 2 carry?"

Ayes

Berardinetti, Colle, Delaney, Martins, Naidoo-Harris.

Nays

Arnott, Forster.

The Chair (Mr. Shafiq Qaadri): I declare schedule 2 to have carried.

We now move to schedule 3. I believe that we have NDP motion number 2. Ms. Forster.

Ms. Cindy Forster: I move that subsection 22.1, subsection 1 of the act, as set out in section 1 of schedule 3 to the bill, be amended by striking out "No employer shall take any action" at the beginning and substituting "No employer or person acting on behalf of an employer shall take any action".

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. The floor is yours for comments, and then I'll open it up to the rest of the committee.

Ms. Cindy Forster: Thank you, Chair. First of all, I want to say that the NDP is fully supportive of most of schedule 3 and the amendments that we'll be continuing to discuss. Our amendment actually strengthens the government's bill to make sure that there are no loopholes because we know that many times in legislation, there are a lot of loopholes.

We know that many employers, particularly bigger employers, actually hire consultants, lawyers, HR firms and employer advocates to try and make sure that employees do not get their WSIB claims approved. So we want to make sure, when fines are being meted out for either obstructing the process or providing false information—we've all seen this happen in our workplaces—for claim suppression or any of the issues that we're talking about, that we capture all of those people who may be hired, in fact, by the employer.

I wanted to just briefly touch on some of the other pieces of the schedule, the Fair Practices Commissioner.

Now, I've had a number of meetings over the past three or four weeks with respect to the Fair Practices Commissioner, and certainly the people out there in the province of Ontario who have experienced the work of that appointment—I think the appointment has actually been in place since 2003—tell me that they don't even use it anymore because they never get a decision out of the Fair Practices Commission that actually has to do with any policy changes or anything that would assist workers in getting their benefits approved.

They certainly have been coming forward to say they want that position to be independent. They want that position not to be appointed by the board of WSIB. In fact, they would prefer to see the position approved in a way that the other legislative officers here in the Legislature are approved: by unanimous approval of all three parties. Only in that way do they believe that the Fair Practices Commissioner will have independent oversight for their complaints. They want that office to be someone who is credible, who has some understanding of the WSIB process and who will advocate on their behalf because that's what they believe the position needs to be.

That's really all I have to say at this point on amendment number 2.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. French and Mr. Colle—I'll give it to Mr. Colle, if that's okay with you, Ms. French, just to alternate.

Ms. Jennifer K. French: Yes, sure.

Mr. Mike Colle: Just in terms of the amendment, I certainly agree with the need to make sure that claim suppression doesn't take place, because I know we had a deputation that seemed to present the case that it doesn't happen and is very rare, but it is the belief of the ministry that it does happen and it is, at times, insidious, in that it happens indirectly. I can understand why the member put forth this motion, but I just want to say that there is a very specific part of the bill which says that an employer cannot do, either directly or indirectly, on behalf of an employee—an employer can't do that.

In other words, they can't do it through other means or hire, as you said, agents or consultants or whatever they are called. So that, I think, covers that. Plus, as you know, the fines have been increased substantially from $100,000 up to $500,000 and I think that will be, also, a deterrent. It sends a pretty strong signal that this claim suppression will not be tolerated. As much as we like the sentiment of what the member is proposing, I think that the bill is strong enough in sending a very strong, explicit message that employers cannot do this themselves directly or indirectly. They will be essentially dealt a heavy penalty on the part of the employer because it might be hard to track if the employee is doing it on behalf of the employer, so this goes right to the employer who gets the fine.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. To Ms. French, then Mr. Arnott.

Ms. Jennifer K. French: Specific to amendment 2 and to the member opposite's—Mr. Colle's—comment that he said "directly or indirectly" when we're speaking about an employer, he thinks that that covers that or he thinks that it's strong enough. We would like it to have the force of law. We're not interested in what we think might hopefully, cross-our-fingers, be strong enough.

This part here where it is striking out "No employer shall take any action" and substituting "No employer or person acting on behalf of an employer shall take any action," this specific amendment—and you are going to see it in others that we're submitting—expands, is capturing an employer's designate. We see that through various

pieces of legislation that talk about the "minister or designate." You recognize that there may be the occasion that the minister isn't available, so a minister or designate. That is the intent of this piece: to capture any instance where people might be working on behalf of employers. It prevents a loophole. We're not interested in more loopholes; that's why we're here. That's why we're looking at this. That's speaking specifically to that wording change.

1710

This schedule of Bill 109, while, as you've heard, we support it in spirit, we also support it in specifics. There is a need to fix an issue that this government and four Ministers of Labour have acknowledged is an issue, this loophole. We're wanting to close it decisively, not cross our fingers that we kind of close it-ish.

The bill that I had put forward, Bill 98, Protecting Victims of Occupational Disease Act, included more, was broader-focused. Bill 109 essentially takes half of that bill and presents it here. But, as I said, it comes from that initial loophole, a loophole that unfairly targets victims of occupational disease. It needs to be closed. We don't need to start creating new loopholes. "Employer" and "employer or person acting on behalf of the employer" are not the same things, so we would like that to be clear, and I don't see how you can argue that, especially when this is a government that puts forward on a regular basis in legislation "minister or designate." That's something that we understand is needed.

I have time to speak to this, don't I?

Ms. Cindy Forster: You do.

Ms. Jennifer K. French: Fabulous.

I would like to talk about the similarities between this and the bill that I had put forward addressing that loophole in the Workplace Safety and Insurance Act that has allowed spouses and victims of occupational disease to be denied loss of earnings and survivor benefits. I don't think there's anyone in this room who would not agree with the fact that it is appalling that hundreds of Ontarians fall victim to occupational diseases every year. It's even more appalling, though, when we discover that we're allowing them to be hung out to dry, which brings us back to why we're here and why we're discussing and debating this, and why this is a very important fix.

This is about common decency. As I mentioned, this is a government that has acknowledged that this is an issue that needs to be addressed. There have been four Ministers of Labour since that acknowledgement was made, and still there isn't that resolution. We see this, and, again, it goes half-way. Bill 98 had two halves to the equation and this has half; this goes half-way. Speaking to this specific amendment, "employer or employer designate," again, it's half-way. We have the opportunity to make something strong here; let's do that.

This affects a variety of workers. I had the opportunity to be in Sudbury, which is where I had a chance to meet with compensation representatives from USW 6500, who represent widows and miners who are struggling with occupational disease, who are representing the families of the miners who have passed due to occupational disease. This has been an issue that they have been championing, that the NDP has been championing, that the Ontario Federation of Labour has been championing, and, most recently, the firefighters, once the firefighters started to be targeted by this loophole and by employers realizing that they could capitalize on this awful and mean-spirited loophole.

It is workers from a variety of occupations who have been affected, and, as I said, though firefighters have specifically been targeted due to the prevalence of occupational diseases in their field, this is something that we have the chance to really fix in a substantial way.

In fact, I'd like to take the opportunity, if I may—May I? I may. Okay, good. I would like to read something—

Ms. Cindy Forster: You get 20 minutes.

Ms. Jennifer K. French: Chair, how much time do I have?

The Chair (Mr. Shafiq Qaadri): Probably 15 minutes. I should just remind you: You are, Ms. French, a duly elected MPP. You can do many things. So, while I appreciate your asking my permission each and every time, please—

Ms. Jennifer K. French: Oh, please don't misunderstand that I was asking permission. I'm more asking for confirmation or clarification. Just so we're clear, this is not about permission; this is just being polite.

The Chair (Mr. Shafiq Qaadri): I confirm and clarify.

Ms. Jennifer K. French: Yes. I'd like to read something from Hansard from the second reading of my Bill 98, Protecting Victims of Occupational Disease Act—

Interruption.

The Chair (Mr. Shafiq Qaadri): Mr. Colle, your colleague officially is not to sit at the table until she's an elected MPP.

Go ahead.

Ms. Jennifer K. French: So I am pleased—

Mr. Mike Colle: Can I go to the back there?

The Chair (Mr. Shafiq Qaadri): I believe—

Ms. Jennifer K. French: See, that's permission.

The Chair (Mr. Shafiq Qaadri): I don't even need unanimous consent for that, Mr. Colle. I think you can.

Ms. Jennifer K. French: I would like to point out that that was clearly asking permission—

The Chair (Mr. Shafiq Qaadri): Which I clarified.

Ms. Jennifer K. French: —just to illustrate.

I'm pleased to read into the record something that is already on the record, from Hansard, from the second reading of Bill 98, from the debate.

I very much appreciated that the Minister of Labour spoke to the bill and participated in the debate. So I would be pleased to share some of those thoughts just as we are heading into schedule 3, and remind the government members that this matters, and I'd like to remind them of what their Minister of Labour has said.

"It is a pleasure, once again, to rise in this House and speak to the bill that's being put forward by the member from Oshawa. Let me right from the start tell the member

that I'll be supporting the bill, and certainly I've urged my colleagues to support the bill....

"It's the type of issue that I think crosses those partisan lines. It's wonderful to see an initiative come forward from the New Democratic Party that is very similar to an initiative that's being put forward as a piece of legislation from the government itself....

"If you look at Bill 98 and you look at Bill 109, you'll find that there are an awful lot of similarities. I'm urging all members of this House, as I said, to support this bill, because I think that as Bill 109 moves through the committee process"—and, by the way, we're in the committee process. Sorry; back to the Minister of Labour—"and amendments and different ideas come forward, opinions come from all three parties during the standing committee process, there may be, in fact, some room where amendments could be brought forward which would actually meet the intent of what the member from Oshawa is proposing in Bill 98."

I'm going to spare us all of these pages.

"Let me close with my thanks to the member from Oshawa for bringing this issue forward. My thanks to her for sitting down with me ... and discussing what she was hoping to accomplish, and my thanks to her for listening to me, as Minister of Labour, explaining how I think that we can work together on this. I think we can get to the place that you would like to see us get to in the end.

"I'm supporting the bill. I hope all members on this side of the House will support the bill, and I'm assuming everybody on that side of the House will as well."

I'm pleased to remind us of the second reading of Bill 98 and to point out the similarity and the shared ideal here that we're wanting to fix a loophole. We're not looking to create more, despite what I had heard in response to this specific amendment.

As I had mentioned, we've been having these conversations now for quite some time. There have been people championing this issue, that was first discovered in Sudbury—four Ministers of Labour. I mean, this has been quite the journey, and here we sit in committee after quite the journey, with everybody weighing in and everyone acknowledging this is an issue to be addressed, and we have the chance to address it.

What we see in Bill 109 is half—half of what needed to be accomplished. It focuses on the surviving spouses and their benefits, and I am awfully glad to see that come forward as a change. But what about the workers who are diagnosed in their retirement with occupational disease? We are continuing to allow them to be hung out to dry, and that's not in the spirit of the WSIA. It's not in the spirit of being Canadian. You don't hang people out to dry who are suffering. When you have someone who has been diagnosed with an occupational disease, the very fact that it is acknowledged to be an occupational disease means that it has come about because of their occupation, because of their time on the job.

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What we see as the loophole, as the problem, is that for workers who are diagnosed with an occupational disease in their retirement, "Oh, well, tough luck. You should have been diagnosed the day before you retired if you wanted to benefit." I think everybody in this room understands that that's not really fair. If you contracted an illness—and by the time it's acknowledged to be an occupational disease, you've already jumped through how many hoops to get there—your date of diagnosis shouldn't matter. Oftentimes for those who are suffering from occupational diseases, it's latent onset. The day they're exposed is not necessarily the date that they can be diagnosed. We know that; we understand the nature of disease. But we have an opportunity here to acknowledge that you shouldn't just cross your fingers that if you're going to get sick, you darned well better get sick the day before you retire. That's what it does fundamentally come down to, and that's wrong.

I have lots of other things to say, but I also know that we have many more opportunities to do that. I think I will wind it up for now.

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

Mr. Ted Arnott: I don't want to unduly prolong the debate on this amendment, but I do want to introduce some cautionary points. Again, we heard from the Construction Employers Coalition, the Canadian manufacturers' association—now called Canadian Manufacturers and Exporters—as well as Les Liversidge, who is an expert on workers' compensation issues, that there is no documented evidence that claim suppression is a huge problem in the province of Ontario.

I heard Mr. Colle say that the Ministry of Labour believes it is a problem. I don't dispute that, but I don't think we've seen any overwhelming documented evidence that it is indeed happening in a way that some organizations are telling us it exists.

We've been told that the claim suppression provisions of Bill 109 are a powerful remedy to a non-existent problem. Allegations of claim suppression by employers have been advanced since the inception of workers' compensation more than 30 years ago, yet major reports have produced no concrete evidence to support these allegations.

Again, we seem to be talking about a problem that doesn't exist, and on that note, I would have to say I'm not convinced that this motion is necessary.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. Are there any further comments before we proceed to the vote on PC motion 2? Mr. Colle.

Mr. Mike Colle: Yes. As you know, there's—

Interjections.

The Chair (Mr. Shafiq Qaadri): Sorry—NDP motion 2.

Mr. Mike Colle: —a difference of opinion obviously on this, and I respect those two different opinions. It's just that through the Ministry of Labour it has really come systematically to the attention of the workers in the ministry in the field that there is coercion that does take place. The problem is that it's almost secretive in nature so it's really hard—many employees would be reluctant

to even report it and the documentation might be very difficult. I think that's what the ministry is trying to say, that it's out there. That's just to say that the present WSIA does not have any provision to deal with employers that coerce workers.

So this is a giant step forward, whereby now there's a specific section, schedule 3, which has explicit provisions for the first time in Ontario to deal with coercion. It adds a $500,000 fine to it, and I think that makes a pretty strong statement and hopefully it will act as a deterrent beyond being a very explicit part of this law in schedule 3.

As much as there's a difference of opinion, I would hope that the members would support the legislation, and not this amendment, because it's already very powerful in schedule 3, plus the $500,000 fine. I think it's quite a transformative, more powerful tool here to stop workers from thinking—to coerce workers, or employers, from putting forward claims.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. Ms. Forster?

Ms. Cindy Forster: Yes, just a couple of more comments. I wanted to actually address Mr. Colle's original comments about the piece about agents of the employer, HR consultants—those kinds of folks that get hired by employers: that's already being dealt with by using the words "directly or indirectly."

I don't agree that that makes it black and white. In fact, then you get into, "Well, what does 'directly' mean and what does 'indirectly' mean?", as opposed to saying, if you hire any of these folks—if you hire an HR consultant, a lawyer or a WSIB specialist who isn't an employee of the employer—then that, in fact, is indirect. That's why I think we need to make sure that we include examples of who these people can actually be.

With respect to the piece on whether there is a claim suppression problem or not, clearly, depending on who you talk to, you'll get a different answer. But I can tell you that in my experience in the health care sector, there is claim suppression. There is claim suppression in large hospitals. There is claim suppression in long-term-care facilities. While I was actually servicing the Niagara Health System—I think I spoke to this in the Legislature—back in 2005 or 2006 we came upon 700 claim suppressions in one fell swoop for nurses, SEIU members and OPSEU members throughout the Niagara Health System.

What the employer was doing in those situations is that they were telling these people not to file claims, and they would get 100% of their pay. Or they weren't even telling them not to file a claim; they would just continue to pay them and wouldn't submit their form 1s to WSIB. It wasn't until some members then had an occasional sick day where they had the flu, and then they got their paycheque and their paycheque said, "Well, you're only getting paid for nine days this pay period, because you don't have any time left in your short-term disability sick bank."

That's when we actually started to do an investigation by bringing the three unions together and having them go and have a look at this stuff. Then we brought WSIB in and they did an investigation. There was no $500,000 fine, I can assure you. They were just told, "Don't do that again, but you'll still get your experience-rating rebate back," right? Thankfully, though, we were able to get the workers' sick banks reinstated and get those claims filed and into the system.

So there are claim suppression problems in this province. WSIB just doesn't track them. That's why there are no reports: because they choose not to track those for whatever reason.

Anyway, those are my comments on that piece. If there are no other speakers, Chair, not to do your job—

Ms. Jennifer K. French: Oh, I have one thing.

Ms. Cindy Forster: You have one more thing to say? Okay.

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

Ms. Jennifer K. French: Thank you. To go back to the specific wording, I don't understand the push back here from the government. I think you called it quite powerful, strong and transformative, or something like that. No, it says, "No employer shall take any action." That's very specific. That's talking about the employer.

So, as we've talked about, there's going to be a workaround that is going to create a loophole if we don't say, "No employer or person acting on behalf of an employer." We're here debating an issue that came from the fact that miners were dying slowly due to occupational diseases and they were leaving behind surviving spouses, widows. Then, the employers said, "Hey, wait a second. If a worker, a miner, died after he had retired, then his widow's benefits should have been calculated a different way. Let's go after those benefits. Let's target those widows. Let's target grieving widows who have just lost their husbands to a protracted, long-drawn-out occupational illness." They targeted them. One would think they wouldn't because one would expect that employers, who employ people and work with people, wouldn't go after the dollars, that they would recognize the value; they would recognize the situation; they wouldn't kick someone when they were down. But they did.

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So when we have the chance here to say, "No employer or person acting on behalf of the employer," we're just making sure that there can't be another loophole. We're ensuring that—you know what? We've already seen a version of this before. Let's ensure that we say what we mean to say: that the person making the decision, either with the badge that says "Boss" or the badge that says "Sub-boss" or whatever, whoever's in that role, can't, in that instance—that they are covered, that they are captured.

I'm going to have the same argument as we get through these amendments, because it comes down to: Why are you being so specific and allowing a loophole to exist, to create one? "Oh, hey, you know what? Let's come up with a workaround for the employers so that

they can get around this." You are saying that right out of the gate. We're sitting here and talking about a change that needs to happen, it's been four years in the making, but, "Oh, well, let's give that little workaround. Let's hand it to them."

How are you, in good conscience, okay with that? We can call it transformative, but it's not. We can say that we think it's strong enough, but it doesn't have the force of law. So let's give it the force of law.

What, are we going to hurt employers' feelings by saying, "We wanted to ensure that workers are covered, that people who are needing help, who are challenged in the system—we're going to ensure that they are covered. Don't worry, though, we'll leave you an out"? What? I challenge that. I think that's awful.

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

Ms. Cindy Forster: Actually, I just came across this interesting newsletter, the Liversidge e-Letter. I hadn't seen it before when I was getting ready for committee. It actually goes back to 2008.

In 2008, when Howard Hampton was leader of the New Democrats, he was championing this issue of experience rating and claim suppression. He put forward a motion to be debated on May 14, 2008, which said,

"that, in the opinion of this House, the McGuinty government must:

"—immediately direct the Workplace Safety and Insurance Board ... to eliminate the flawed experience rating program;

"—immediately direct the Provincial Auditor to conduct an audit of the flawed experience rating program;

"—recognize the fact that tens of millions of dollars have been drained out of the WSIB's accident fund each year"—while we continue to say that it's underfunded and we have this unfunded liability—"by employers who have learned how to play the game of experience rating;

"—recognize the fact that experience rating reduces employer claims, not worker injuries;

"—recognize the fact that the practice of experience rating actually encourages employers to misreport or under-report injuries and occupational disease, force injured workers back to work before they are medically ready and pay workers sick pay"—which I just talked about in my health sector experience—"rather than have them receive compensation benefits;

"—recognize that this hides the true extent of workplace injuries and illnesses in Ontario;

"—recognize that employers actually receive rebates after they have been penalized for workplace injuries and occupational diseases and deaths; and

"—recognize that the rebates flowing to employers under the program often exceed the cost of the original fine."

It was addressed to the Premier of Ontario at the time, the Honourable Dalton McGuinty. Here were are, six or seven years later, and we're just dealing with some of these issues now—all the while blaming injured workers for unfunded liabilities and fraudulent claims. You name it, workers get blamed for it. That's why employers are actually suppressing claims, because they want to get those rebates back.

I think that it's certainly time to move forward to make some improvements. As my friend Ms. French from Oshawa said, these really are just half-measures. There are so many more issues that actually need to be dealt with in the broken WSIB system. I think that starts with the hiring of the new CEO, or whatever his title is, to make sure that it is someone who has some credibility and is serious about assisting injured workers, which is what the legislation was all about, to start with, when workers actually gave away their right to sue and were ensured the right to have benefits. Today we see thousands of claims being bumped up to the tribunal.

In fact, I met with some people from the Office of the Worker Adviser in the last few weeks who tell me that some of those claims were by people who are existing today on Ontario Works and ODSP because their claims have been denied. Their claims, under this current system, will not see a tribunal for up to 10 years. In the meantime, people are losing their homes, they're losing their vehicles. They end up divorced, with family breakups, because they don't have any money to survive in a system that denies their injuries and does not process their claims and their rights to a fair hearing in a timely manner.

Thank you, Chair.

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

Ms. Jennifer K. French: I was inspired by my colleague to add a couple of more thoughts.

Historically, when we look at this, and we talk about the historic compromise, the spirit of this legislation, the spirit of the WSIA, was meant to protect workers, was meant to protect people who left their homes in the morning and would go to work, so that they could have a safe work environment and, if something should happen, they could seek compensation. They could rest assured, knowing that should something happen—heaven forbid—they would be looked after. That historic compromise—yes, employers dodged the bullet there. Workers were giving up their right to sue.

We have seen, through the years, I would say, an erosion of the spirit of the act, of what it could accomplish, of what it does accomplish. In our constituency offices—I know I'm not alone here; this is not peculiar to Oshawa—on a regular basis, we are supporting constituents who come in, in various states of need, who are stuck in tangles and snares when it comes to WSIB, who are at various stages of the process, whether it's an appeal process or it's right at the beginning. They don't know what to do. They turn to us, and our offices are not just inundated, but our staff are trying so hard to help them through what has become a really tangled mess.

Are there strong aspects? Absolutely. Are there ways that we can identify to further strengthen? Absolutely. We have debated legislation recently, not just my Bill 98,

but also the member from—I don't remember. Ms. Albanese had brought forward a piece of legislation that was specific and addressed age discrimination. Again, there are so many opportunities to focus in on specific sections of this act and strengthen them.

Speaking back to this specific amendment—I hate to beat a dead horse, but I will, since I have to—we have the chance to broaden it, that we have "employer" only or "employer designate," essentially. There is no cost associated with this; there is no reason that I've heard to debate it other than "Just trust us, cross your fingers, don't worry. We're sure that everyone will play nice." No, they may not. We can hope that they will, and goodness knows, speaking as a New Democrat, I'm always full of love and hope and optimism, but I still know that you would need the force of law behind you to ensure the protections that we would hope for.

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One of the things that I had mentioned earlier—and I'm going to come back to it because my colleague, Ms. Forster, talked about the appeals and tribunal decisions. Since 2011—and I mentioned that this issue came up in Sudbury. I would be remiss if I didn't thank and recognize my colleague, France Gélinas, the member from Nickel Belt, who has been championing this issue since it came across her radar back in 2011. Since 2011, there have been 14 Workplace Safety and Insurance Appeals Tribunal decisions that have resulted in the WSIB reducing pensions or the periodic payments to the surviving spouses of workers who had died of occupational diseases.

Originally it was two miners. My understanding is that the employer, with all of the negative media, kind of backtracked and stepped away from it, but the cat was out of the bag. The loophole had been discovered, and flash-forward four years, and all of a sudden, you have lawyers of employers coming out of the woodwork saying, "Hey, look. Here's a way to pull some money back," literally on the backs of grieving widows. I'm just going to let that hang there for a second.

I'm back to the point that, let's not just say "employer," let's say "employer or person acting on behalf of the employer." I'm going to be consistent in calling for this as we look at further amendments, because if the goal of the WSIA and of these conversations is to protect the workers, to protect their families, to protect those the act itself was intended to protect, then let's not undermine that. Let's actually take that opportunity. Let's not go halfway there, and say, "Oh, but what if we hurt some employers' feelings, that we say we don't trust them?" That's not what we're saying at all. We are recognizing, because we are here, that the almighty dollar sometimes drives people to make decisions or to target those who we would hope would not be targeted, but here we are.

Just as a basic explanation of the loophole, widow's pensions were being calculated one way, the lawyers argued that they should be calculated another way, and the lawyers won the argument, even though this was probably a transformative piece of legislation; even though it was probably quite a powerful and strong section; even though we thought that maybe it was covered, or perhaps we thought that it was strong enough. It turns out it wasn't. The lawyers won the argument because they argued the letter of the law.

But today we're talking about the spirit of the legislation. Why don't we talk about the letter of the law, not just let's cross our fingers?

Chair, I'm not asking permission, I'm just asking for the time.

The Chair (Mr. Shafiq Qaadri): I have 14 minutes.

Ms. Jennifer K. French: Time flies when you're having fun.

While I have the opportunity, I would like to just share a couple of thoughts from at least one of the widows I had a chance to talk to in Sudbury: a woman by the name of Gisele Oram. She lost her husband, Harold, to mesothelioma, which is an occupational disease that he contracted while working in the mine.

She said, when I had asked her about the importance of her survivor's benefits that were being targeted because of a loophole, not unlike the loophole we can prevent right now with this amendment, "For me it means life, more or less. Before I finally got the money, I was depressed. People were scared for me that I was going to die, I was so depressed. The government paid for some of the medication. But the government doesn't pay for glasses. Or dentures. It all comes out of pocket and then you have to pay rent after all that. When my husband died, the bill people kept calling me.

"I know that money comes in and I can pay my bills, and ... before that I would be broke after the first week. It means I can breathe.

"Another thing too: I've been sleeping in my La-Z-Boy for four years....

"When the money came in, the first thing I went out and bought was a bed. I was tired of living in a chair."

Chair, I'm sure that you're tired of sitting in that chair, but I—

The Chair (Mr. Shafiq Qaadri): Not at all.

Ms. Jennifer K. French: Wonderful. I, of course, appreciate having the chance to get this important information on record, and to the points we were making earlier when we were debating schedule 2, I appreciate having the chance to speak. I just wish that I had the chance to be heard, and I wish that this information actually could be heard or that I thought for one second that it actually would make a difference and that it isn't just a matter of going through the motions so that we can point to the process and say, "Look at the process we went through." It should be, "Hey, look at the process that we were able to grow through, that we made something better. We made something stronger," and we didn't just hold up our preapproved list of, "Oh, it doesn't matter what they say; we're already going to vote against these amendments", because some person in a backroom doesn't really know what it means to the people of Sudbury, doesn't know what it means to Ms.

Oram or doesn't really care because there's a list of things to do.

This is the democratic process. We've already talked about democracy at length today. The problem is, I think we talk about it and we don't do anything about it, but I repeat myself. I would hate to think that I would start to repeat myself, so maybe I should take a break. Can I call for a recess, Chair? I'd like to call for a recess.

The Chair (Mr. Shafiq Qaadri): We still have Ms. Naidoo-Harris who's asked and she's on record for that.

Ms. Jennifer K. French: So I can't call for a recess?

Interjection.

Ms. Jennifer K. French: Okay.

The Chair (Mr. Shafiq Qaadri): Just to be clear, you can call for a 20-minute recess and it will be automatically granted when we are voting. If you just call for a recess, then I have to ask for the will of the committee, which I sense will not be granted.

Ms. Jennifer K. French: Oh, okay. Thank you.

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

Ms. Indira Naidoo-Harris: I just want to make a couple of points. Basically, I think that we should be very careful as we move forward with this next little bit. By adding the phrase "person acting on behalf of an employer," we are walking into some very sensitive and complicated scenarios.

We have to remember that the employer and employee relationship is a complicated one and that individuals employed by a corporation are performing obligations on behalf of their employer. By adding this, "a person acting on behalf of the employer," we are really taking a step that's too far and does not recognize the responsibilities that may be implied by an employer on an employee.

So I feel that, really, this is about people's rights and this is about protecting them, and I think what we're doing here is—this scheme does not contemplate imposing obligations and penalties on persons other than employers, and I think that is something that has to be emphasized and underlined here.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. The floor is open.

Ms. Forster.

Ms. Cindy Forster: I'll call for a recess.

The Chair (Mr. Shafiq Qaadri): Once again, this recess which you're entitled to call for is not occurring at the time of a vote and, therefore, the request for a recess must be voted upon.

Interjection.

The Chair (Mr. Shafiq Qaadri): Agreed to. Is it the will of the committee—

Ms. Cindy Forster: No. I'm calling for a 20-minute recess prior to a vote.

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes, but I don't think we've moved to the status of voting yet. The floor is still open for comments.

Ms. Cindy Forster: I didn't see anybody raising their hand.

The Chair (Mr. Shafiq Qaadri): True. I have to see it. Shall we proceed to the vote on NDP motion 2? Is that the will of the committee?

Ms. Cindy Forster: I call for a 20-minute recess.

The Chair (Mr. Shafiq Qaadri): Now your 20-minute recess is granted. I should also just inform committee members that since 20 minutes exceeds 6 p.m., it is essentially deemed that the committee is adjourned. We will now reconvene on Thursday at 9 a.m. on December 10. The first order of business at that committee will be voting on NDP motion 2.

Thank you for your patience and endurance. The committee is adjourned.

The committee adjourned at 1750.

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