



ISSN 1710-9442

Legislative Assembly
of Ontario
Second Session, 38th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Thursday 24 November 2005

Journal des débats (Hansard)

Jeudi 24 novembre 2005

**Standing committee on
justice policy**

Ending Mandatory Retirement
Statute Law
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**Comité permanent
de la justice**

Loi de 2005 modifiant
des lois pour éliminer
la retraite obligatoire

Chair: Shafiq Qadri
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 24 November 2005

Jeudi 24 novembre 2005

The committee met at 1003 in room 228.

ENDING MANDATORY RETIREMENT
STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS
POUR ÉLIMINER LA RETRAITE
OBLIGATOIRE

Consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement / Projet de loi 211, Loi modifiant le Code des droits de la personne et d'autres lois pour éliminer la retraite obligatoire.

The Chair (Mr. Shafiq Qaadri): Good morning, ladies and gentlemen. As you know, we are here for the standing committee on justice policy to begin clause-by-clause consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement. Motions to be presented today have been distributed by the clerk, and I presume each and every one of you has those. If not, please let us know.

I'd also like, on our collective behalf, to welcome legislative counsel Ms. Mariam Leitman, who is present with us to help us with any background consideration of the clause-by-clause.

I'll open the floor now for general comments on any particular aspects of the bill.

Mr. Peter Kormos (Niagara Centre): I just want to very specifically thank Ms. Leitman for her assistance to me and the NDP caucus on short notice in this matter. I appreciate her prompt and thorough response to our request for help.

The Chair: Thank you, Mr. Kormos.

Thank you, again, on behalf of the committee, Ms. Leitman.

Are there now any specific motions to be entertained for, say, section 1?

Mr. Kormos: I move that subsections 1(4) and (5) of the bill be struck out and the following substituted:

“(4) Subsection 25(2) of the code is amended,

“(a) by striking out ‘age’; and

“(b) by striking out ‘Employment Standards Act’ and substituting ‘Employment Standards Act, 2000.’”

The Chair: Thank you, Mr. Kormos. Would you care to discuss your particular motion?

Mr. Kormos: I want to make it very clear that this is very specifically in response to the request of OCUFA, the Ontario Confederation of University Faculty Associations, which expressed concern about the limbo that post-age-65 workers will find themselves in with respect to any other number of rights, like WSIB, like pensions, like Employment Standards Act application. This goes to that concern expressed on their part. There was a similar concern expressed by the Canadian Auto Workers, and they were here yesterday, of course. They had specific concerns about the treatment of post-age-65 workers in terms of guarantees for maintaining the age of eligibility for public pensions; as well, the guarantee of application of Employment Standards Act and WSIB support and eligibility for age-65-and-over workers, should this bill pass.

The Chair: Is there any further discussion on that particular motion from either caucus?

Mr. Kevin Daniel Flynn (Oakville): Our side will be supporting this motion. I just wanted to put that on the record.

The Chair: Any further comments?

Mr. Norm Miller (Parry Sound–Muskoka): Is there a staff person here who could further explain what this particular change will do?

The Chair: Are there ministry people? Please come forward.

Mr. John Hill: I'm John Hill. I'm general counsel with the Ministry of Labour legal services branch.

This motion, on its face, would take away the shelter that subsection 25(2) of the Human Rights Code provides for benefit plans and pension plans that make differentiations on the basis of age where they comply with the Employment Standards Act, 2000, and the regulations made under it.

My understanding is that the government will be moving a motion subsequently which will provide some shelter, although in a different form.

The Chair: Is there any further discussion on this particular issue?

Mr. Kormos: A recorded vote, please, Chair.

Ayes

Brownell, Delaney, Flynn, Kormos, Miller, Mossop.

The Chair: I declare the motion carried.

Are there any further motions to be presented for section 1?

Mr. Flynn: I move that the bill be amended by striking out subsection 1(4) and substituting the following:

“(4) Subsection 25(2) of the code is amended by,

“(a) striking out ‘age, sex, marital status or family status’ and substituting ‘sex, marital status or family status’; and

“(b) striking out ‘Employment Standards Act’ and substituting ‘Employment Standards Act, 2000.’”

Mr. Kormos: On a point of order, Mr. Chair: I suspect that this motion and the amendment contained in it are out of order because the amendment provided by my motion did exactly what this motion does. It’s already been done. There is no “age” left in the subsection.

Mr. Flynn: With that understanding, we’d be happy to withdraw the first motion, then.

The Chair: Is legislative counsel agreeable? All right.

I thank you, Mr. Flynn, for withdrawing that particular motion on subsection 1(4).

Are there any other motions with regard to section 1?

Mr. Flynn: I move that the bill be amended by striking out subsection 1(5) and substituting the following:

“(5) Section 25 of the code is amended by adding the following subsections:

“Same

“(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the Employment Standards Act, 2000 and the regulations thereunder.

“Same

“(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer.

“Same

“(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not ‘age’, ‘sex’ or ‘marital status’ in the Employment Standards Act, 2000 or the regulations under it have the same meaning as those terms have in this act.”

Mr. Kormos: On a point of order, Mr. Chair: I put to you, sir, that this motion is out of order because there is no longer a subsection (5) to section 1 of the bill.

The Chair: Thank you, Mr. Kormos. Let us confer.

Mr. Flynn: I’m prepared to try this again, based on the advice of my friend across the table.

Mr. Kormos: Mr. Chair, if there’s going to be an amendment made by motion, may we please have a written copy of it?

Mr. Flynn: OK. I’ve got all the time in the world. We can go and have it typed up if you want to—

Mr. Kormos: Perhaps a five-minute recess?

The Chair: That’s fine. The committee stands recessed for five minutes or so for written documentation.

The committee recessed from 1012 to 1036.

The Chair: We reconvene to address Mr. Kormos’s point of order with regard to the non-existence of subsection 1(5). If there are any replies to that point of order, the committee is now ready to hear them.

Mr. Flynn: I think we have a new and improved version here. Would you like me to read the whole thing or just the paragraph that has the changes in it?

The Chair: I take it you are going to withdraw your previously submitted version?

Mr. Flynn: Yes, and replace it with subsection 1(5) of the bill, subsections 25(2.1), (2.2) and (2.3) of the Code.

I move that section 1 of the bill be amended by adding the following subsection:

“(5) Section 25 of the Code is amended by adding the following subsections:

“Same

“(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the Employment Standards Act, 2000 and the regulations thereunder.

“Same

“(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer.

“Same

“(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not age, sex or marital status in the Employment Standards Act, 2000 or the regulations under it have the same meaning as those terms have in this act.”

The Chair: I advise the committee that this is considered a new motion for subsection 1(5). We’re calling it government motion number 3. Are there any discussion points on this motion?

Mr. Flynn: The intent of this, as I understand it, is to treat contract group insurance plans the same as employed sponsored plans. For any technical questions, there is staff here from the Ministry of Labour who would be able to answer.

Mr. Kormos: My concern is that this amendment reinforces discrimination against older workers—those over 65—and in some contexts, perhaps others, by permitting employee benefit programs, pension plans, group insurance plans etc. to discriminate against them because of their age. It is the parallel of section 7 in your bill, Mr. Flynn, which extends that discrimination with respect to the welfare of workers as it is dealt with by the WSIB. I’d be more than pleased to hear from one of the civil service bureaucrats here who could well shed light on this and perhaps elaborate on your explanation of the impact of this amendment. This amendment causes me great concern at this point. Perhaps that concern can be abated.

The Chair: Mr. Flynn, I understand you are obligated to invite members of bureaucratic staff. If you would care to do so, please do so.

Mr. Flynn: I didn’t realize I had to formalize that invitation.

Would you like to join us at the table, sir?

Mr. Kormos: What if he says no?

Ms. Jennifer F. Mossop (Stoney Creek): We wouldn't blame him.

Mr. Hill: The bill, as it read at first and second readings, provided a shelter for pension plans and certain benefit plans insofar as discrimination on the basis of age, insofar as age 65 and over, is concerned. In other words, the bill in effect said that a benefit plan can treat employees aged 65 or older differently than other employees. It could, in fact, even allow the plan to exclude them from coverage.

However, there has been some case law on subsection 25(2) of the Code which indicates that the shelter that subsection provides only applies to a benefit plan that is insured with an insurance company. In other words, a benefit plan that the employer self-insures does not have the benefit of the shelter provided by subsection 25(2).

The motion to amend the bill would ensure that the shelter provided by subsection 25(2) would also apply to employer self-insured benefit plans.

Mr. Kormos: Thank you kindly. I'm trying hard to read this amendment in the context of what you're saying. "The right under section 5 to equal treatment with respect to employment without discrimination because of age," which is the thrust of this bill: Is that fair?

Mr. Hill: Yes.

Mr. Kormos: That's the central point of this bill: to eliminate age 65, the upper end of the age definition.

Mr. Hill: Yes.

Mr. Kormos: It maintains the age of 18 at the lower end as a lawful discriminatory point but eliminates the upper end. The equal treatment that's being talked about is the equal treatment that now, according to the government, will be afforded all workers regardless of their senior age, 65 and over. So the right to equal treatment with respect to employment "is not infringed by an employee benefit, pension, superannuation or group insurance plan ... that complies with the" ESA "and regulations thereunder."

You see, my problem is that if the ESA didn't permit some discrimination, then there would be no need for this amendment, would there?

Mr. Hill: That's correct. The Employment Standards Act and its regulations prohibit discrimination—differentiation on the basis of age, sex or marital status—in pension plans and benefit plans, but then creates a number of exceptions in the regulations under the Employment Standards Act.

Mr. Kormos: Exactly. So what we're doing here is permitting, by statute, employee benefit, pension, superannuation or group insurance plans or funds to be discriminatory, notwithstanding that section 5 guarantees equal treatment with respect to employment.

Mr. Hill: Yes; that's what subsection 25(2) does.

Mr. Kormos: Yes, so I'm right to be concerned about this.

Mr. Hill: That's a policy question. I can't answer that.

Mr. Kormos: I suppose it depends on whether you're standing with the bosses or you're standing with the workers.

Thank you kindly. I appreciate your assistance.

This is dangerous stuff, and as I say, it is the partner of section 7, which discriminates against these workers 65 and over with respect to eligibility for workers' compensation. I am distressed that this government would market the legislation as being anti-discriminatory on the one hand, and yet on the other hand say that any number of things—we know what the problem is; I understand. The older you are, the more expensive it is to insure you for various health coverages. That's clear. We all know that, just as a result of our day-to-day lives and the lives of our parents getting insurance coverage to travel down to Florida for a month or so if you're a snowbird and a senior citizen.

But what this bill will do, then, is create two classes of workers. Since the age 65 doesn't exist any more, we don't know where that'll be. Do you understand what I'm saying? Since the age 65 doesn't exist any more, an employer can begin discriminating in these areas of employee benefits etc. even earlier than 65. Unless there's a companion section here that indicates that this doesn't kick in until a worker is age 65. To you, sir?

Mr. Hill: Perhaps it would help if I explained in more detail about the Employment Standards Act and its regulations.

Mr. Kormos: Sure.

Mr. Hill: The Employment Standards Act prohibits discrimination differentiation on the basis of age, sex or marital status. The regulations then create a number of exceptions. Some of those exceptions are based on actuarial considerations, but the exception that you're, I'm sure, concerned about is the definition of age that's in the Employment Standards Act regulations, which reads very similarly to the way that the code currently reads insofar as the definition of age is concerned. In other words, age is defined under the Employment Standards Act as an age of 18 or more and less than 65.

Mr. Kormos: And so be it. Again, I don't expect you to—you're here as a policy person who's clarifying the issues. But understand that that doesn't address my concern, because this section of the code stands alone. In other words, this amendment to the Human Rights Code will not ensure the stability of the provisions that you're talking about in the Employment Standards Act. The Employment Standards Act stands alone, as a stand-alone piece of legislation, and the regulations to it. In other words, this section to the Human Rights Code does not, because it eliminates the age 65. Notwithstanding that the Employment Standards Act incorporates the age 65, the Human Rights Code does not prevent the Employment Standards Act from subsequent revision. That's my concern, and that's obvious. That's not a profound observation.

That's my concern, I say to government members. We've got here two classes of workers, for sure beyond the age of 65 and maybe below the age of 65. I'm not suggesting that the statute in and of itself lowers the age, but it certainly doesn't protect that age.

This is exactly what people told you about. It's exactly what labour leaders like Wayne Samuelson, Sid Ryan,

Leah Casselman and so many other great people in this province expressed real concern about. We've got two classes of workers in your brave new Ontario, and I will be opposing this amendment adamantly and I will be calling for a recorded vote. This is very, very dangerous stuff. Nasty stuff too—nasty and mean.

The Chair: Any further discussion on this motion?

Mr. Flynn: At the risk of being nasty and mean, I think it's important that some facts be put on the table. Ending mandatory retirement would not have an impact on any pension benefits that have already been earned. Employees can continue membership in plans beyond the age of 65. They can accrue benefits, subject to any service or maybe contribution caps that are applicable to that individual plan. You can get your CPP. That doesn't change under the proposed bill. CPP, old age security and GIS are all administered by the federal government. That would be a matter for the federal government and certainly is nothing that is contemplated by the provincial government.

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Currently under the Employment Standards Act, employers are prohibited from discriminating on the basis of age when they provide benefits to those people between the ages of 18 and 64. This provision remains in place. Nothing in the proposed legislation would prohibit employers from providing benefits to workers beyond the age of 65. Individuals over the age of 65 would continue to be eligible for the Ontario drug benefit plan, for example. Workplace safety and insurance stays the same. The status quo remains as protection in place for those workers over the age of 63.

I think there's a lot of good being done by this bill overall. We believe that it's a matter of choice. We're trying to bring it in in a way that is sensitive to both employees and employers in this province. There's a one-year provision before it comes into effect. Everybody I've talked to believes in choice. We know there's a trend in society toward earlier retirement. We know that in the past it's become the norm, for some reason, to apply the age of 65 to a good many of our pension and retirement plans, and a host of things that we've sort of framed our society around. That attitude is changing. We think this proposed bill goes a long way toward changing with society's acceptance of the abilities and the rights of people beyond the age of 65 to enjoy the same employment rights as those under 64.

Mr. Kormos: Very briefly, of course nothing prevents an employer from providing the same benefits to a 65-and-over worker as it does to a 65-and-under worker. Similarly, there's no legislation that prevents a boss from giving his workers annual 10% salary increases and there's no legislation in the province that prevents a boss from giving workers additional holidays. The point is that your legislation doesn't require a boss to treat a 65-and-older employee the same as a 64-and-under employee with respect to things like benefits. That's what we're speaking to.

I'm calling for a recorded vote, sir.

The Chair: Is there any further discussion?

Mr. Frank Klees (Oak Ridges): With respect to this amendment, do we have on the record any opinions from employee benefit underwriters, insurance companies or pension funds as to the implication of this?

Mr. Flynn: I can address that briefly. During the consultation period, groups such as you've just outlined were consulted and their opinions were sought. If I could frame it this way, there seemed to be an expectation that there was a potential for increased expenses, but when asked, to my knowledge, the same groups that were providing that information could never quantify that amount, could never bring forward the evidence that would prove that. There just seemed to be an expectation. Experience in other jurisdictions that have implemented this type of legislation appears to be that there has not been any increase in expense to the employer or to the plans themselves.

Mr. Klees: I would find that very difficult to understand. If you have, for example, an employee benefit plan, whether it is providing dental or drug plans or some form of physiotherapy and so on, clearly the older an employee gets, the higher the risk to claim against those benefit plans. Benefit plans are a very simple structure, as you well know. It's simply premiums paid versus claims, and the net is either a surplus or it's a deficit. If at the end of the day, in any given plan, your claims are higher than your premiums, it's made up at the end of the year with a notice to the employer or to the members of the plan that your premiums, your contribution has to increase.

I'm wrestling with this issue of these consultations having taken place and we don't have an answer for this, because, as you say, there are other jurisdictions that clearly have experience. This isn't an art; this is a mathematical science. Surely there have to be programs and plans, and there have to be statistics available that very clearly say, "In jurisdiction A, where this has been in place, here is the actual experience of the financial institutions, the pension plans, the employee benefit plans." One would think that it would be very much part of our decision-making process that you as the government can point to those facts and say, "Let me give you this assurance." But you're telling me that we don't have that.

Mr. Flynn: The industry, when it was consulted, Mr. Klees, was asked those specific questions. Staff themselves went out and did an interjurisdictional scan for evidence of what the impact had been of the implementation of this legislation in other jurisdictions. Independently, we could not find that there had been any major impact on the expense of pension plans, benefit plans or dentals plans as the result of the ending of mandatory retirement. When the industry was asked to provide figures they may have that would assist us in that regard, my understanding, and to this date my knowledge, is that those figures were never provided. However, the advice that appeared to be coming from them is that there was a potential for increased expenses.

So it was sought. You certainly can't compel somebody to give you facts they either don't want to give you

or they may not have. I don't know exactly what the answer was in that regard. They were invited to provide that information.

If you look at places like Quebec and Manitoba, where this was done over 20 years ago, I don't see, or haven't heard during any of the public consultations, that their plans differ in any significant way from plans in Ontario. And they have ended mandatory retirement.

The Chair: Any reply, Mr. Klees?

Mr. Klees: Well, Mr. Chair, the best that I can do on this amendment is to abstain from voting on it. I don't know how the government can, frankly. I'm at a loss to understand how we can pass something like this without having the kind of information that I've just spoken to, which is rudimentary. For the government to say it's at a loss as to how to glean this information, confounds me. On behalf of stakeholders, on behalf of employees, on behalf of workers, on behalf of companies that pay premiums, on behalf of pension fund administrators who have responsibilities, I'm in no position to cast a vote on this.

I caution members of the government, because at some point they're going to have to answer the question: On what basis did you make this decision? Anyone who reads Hansard and reads your response is going to question your judgment on this.

Mr. Flynn: To be fair, Mr. Chair, if Mr. Klees has some information that he would like to bring to the attention of the committee, we certainly at this point in time would be more than happy to examine it. If he has been able, through his own research capabilities, to glean some information that hasn't been provided to the government, we would be quite happy to receive that information.

During the period when his own party was intent on passing this type of legislation, if there was any research that was done at that point in time that should be made available to all members of this committee before a decision is reached, as a government we would certainly welcome that.

The Chair: Thank you, Mr. Flynn.

The floor is still open for further discussion.

Mr. Klees: I'll respond to that. Mr. Flynn, if you were to compare my ability to provide you with research to the ability that your finance ministry has, I think to suggest that I can bring something forward that you can't, with all of your resources, is quite cute.

That's your responsibility. You have carriage of this legislation; I don't have it. That's why I'm asking the question. If I had it, I would—

1100

Mr. Flynn: The facts are there. The facts have been sought. I think we've done a very good job of the interjurisdictional scan and the information—

Mr. Klees: Fair enough. I'm saying that I don't think the ministry has done an adequate job of providing this committee and, subsequently, the Legislature with sufficient and factual information as to the implications to the employer, the pension funds, the benefit plans or

the workers. For that reason, I can't make a decision on this. I'll abstain from the vote. I'll be very interested, subsequently, in how members of the government will justify their vote on this.

The Chair: Are there any further remarks on this particular motion?

Mr. Mario G. Racco (Thornhill): I want to add my own piece. I would like to remind Mr. Klees that we're all paid by the people, and if any of us have any information, since the people paid for the information that we have, then all of us have a responsibility to provide that information.

In regard to the information that we have not being full enough to be able to make a decision, I'm surprised. The Tories are usually the ones who say that we waste too much time doing things, that they'd bring in efficiency.

I'm not going to be able to fully comment because I'm not the PA for labour, but certainly there is a time when decisions have to be made, and any information that any of us has should be shared with the committee so that the best decision can be made with the information that is available, paid by the people on behalf of the people. Those are my comments.

Mr. Klees: In this case, I think the people have been short-changed, Mr. Racco. As I've said before, whether it's the Ministry of Finance or the Ministry of Labour, you just look at the budget of this government, the multibillions of dollars that are spent. In return for those multibillions of dollars in taxes that your government strips from taxpayers, that you can't answer the fundamental, rudimentary questions that I've put to this committee is unconscionable.

Mr. Flynn: That's the wonderful thing about this place, that so many different opinions don't necessarily have to be based on fact. The consultation that was done in the preparation of this proposed legislation has been very extensive. We travelled over all the province. We heard a variety of opinions, and I'm sure there will be a variety of opinions around this table as to whether this legislation should be passed. But to suggest that somehow the research on this proposed legislation has in some way been faulty is unfair to those members of the civil service who prepared that information and, in my estimation, have done a very, very good job, both internationally and domestically, looking at the experience of our southern neighbours and those of neighbouring provinces that have already implemented this bill.

The question asked was, is there any evidence that this change would impact the expenses incurred by pension plans or by benefit plans, presumably to employers in this province? The answer has been that no evidence could be found, but to be fair to the companies that were asked, there was, in their opinion, a potential for increases to expenses. That's a very clear answer; I think that's a very fair answer.

Certainly, if there is other information out there, it's important that it be brought to this committee's attention.

The Chair: Is the committee ready to proceed to the vote on this particular motion?

Mr. Kormos: Recorded vote, please.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare the motion carried.

Is there any further discussion on this particular section, section 1? Seeing none, we'll now—

Mr. Kormos: Recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare section 1, as amended, carried.

In order to expedite the next vote, may I ask if it be the will of the committee to collapse the block consideration of sections 2 to 9, inclusive?

Mr. Kormos: Two to 6, please.

The Chair: Two to 6, inclusive. All those in favour of block consideration of sections 2 to 6, inclusive? All those opposed? I determine that those sections have now carried.

We now move to consideration of section 7. Is there any motion or commentary on section 7?

Mr. Kormos: I'd appreciate an explanation of section 7. I've got a pretty good idea of what section 7 does: It permits older workers to be thrown to the wolves in the workplace when it comes to workplace injuries and deaths. That is to say that there still can be discrimination—to wit, discrimination against older workers; to wit, denial to them of the same levels of WSIB coverage that are available to workers who are under the age of 65. Perhaps our friend can elaborate on this.

Mr. Flynn: Certainly the status quo remains as far as WSIB is concerned. Workers in Ontario currently over the age of 63 are allowed to collect up to two years of replacement earnings. That will not change with the passage of this bill.

Mr. Kormos: If the status quo prevails, what do these sections do? Why do we need them? Are they baggage that can be discarded to clean this bill up?

Mr. Flynn: I may not have an answer that will please Mr. Kormos, but certainly any entitlement that is enjoyed by somebody in the province of Ontario over the age of 63 would continue even with the passage of this bill.

Mr. Kormos: Well, let's take a look at it carefully, then: "A provision of this act"—the Workplace Safety

and Insurance Act—"or the regulations ... or a decision made under this act" or the regs "that requires or authorizes a distinction because of age"—that's called discrimination; right, Mr. Klees? That's discrimination—"applies despite sections 1 and 5 of the Human Rights Code." There are more provisions in this bill which speak to discrimination than there are provisions which, as you would have people believe, eliminate discrimination.

I know full well what section 7 does. It puts workers 65 and over, just as the last amendment did, in a second-class position when it comes to entitlement to workers' compensation. New Democrats are adamantly opposed to section 7. We're calling for a recorded vote when the Chair finds it appropriate to call a vote.

Mr. Flynn: My understanding is that those workers over the age of 65 currently in the province of Ontario do not enjoy the same employment rights as those workers under the age of 65. We, as a government, want to change that. This party supports that; my understanding is the Progressive Conservative Party supports that. My understanding is that the New Democratic Party does not support extending that choice. There may be some conversions on the road to Damascus here; I don't know what is happening. But certainly the intent of this is to extend rights to the workers of Ontario, and we support that.

The Chair: The floor is still open for any general comments on section 7. Seeing none, we'll proceed to the recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare section 7 to have carried.

Again, with the committee's indulgence, if sections 8 and 9 can—

Mr. Kormos: No, sir.

The Chair: We can move to consideration of section 8 individually. The floor is open for commentary on section 8.

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Mr. Kormos: I understand why the government would want a one-year period before this law comes into effect, but I wonder what the government then says to Wilfried Schwark of Maple, Ontario, who clearly does not share my views—he's quite specific about that—around the issue of mandatory retirement or retirement ages, who talks about "a loss of \$50,000 in taxes" that he pays every year.

I tell Mr. Schwark I'm envious. It's been a long time since I've earned enough money to pay \$50,000 in income tax. As a matter of fact, it's been around 17½ years, the number of years that I've been here, that have passed since I've been able to have the privilege of

paying \$50,000 a year in income tax. God, those were good years, the 1980s. They were Porsche years. They were Corvette years. It was a wonderful time.

To be fair, what does the government say to people like Mr. Schwark? Again, I don't agree with his position, but I also suspect that Mr. Schwark, without knowing a great deal about him other than what's in his letter, may well be working after the age of 65, whether this bill passes or not or whether it comes into effect or not. It is by inference, the sort of work that he may well be doing, because we really don't have a law against working once you're beyond 65. Regrettably, far too many people are working beyond 65 because they have to.

What do you say to Mr. Schwark, who suggests—and maybe not Mr. Schwark, but some of the others. What do you say to the university professor—again, I disagree with the government's policy in this regard—whose retirement date is, let's see, what's this? This is November. We're going to rise December 15. This bill may well get third reading, depending upon whether the government calls it before December 15. It may well have the support of the majority of the assembly. New Democrats aren't going to support it. We're opposed to it. Let's say December 15, hypothetically. What do you say to the university professor whose mandatory retirement takes place December 12, 2006: "Too bad, so sad?"

Mr. Flynn: During the consultation period, the very point that's being made was raised by a number of people who came forward. There was a variety of opinions expressed. Some people said, "Keep mandatory retirement in place. We don't agree that some workers beyond the age of 65 should have the same employment rights as those under." Some people said, "Bring it in, but wait for seven years." Some people said, "Bring it in, but bring it in retroactively." And there were a lot of people who are facing retirement coming forward and saying, "I need to make some plans in my life."

What we did at the committee level was outline the government's intent to bring an end to mandatory retirement. With that proposal looming in the future at some point, we asked employees who were facing this type of prospect, who were facing perhaps the potential of a forced retirement, to contact the Ministry of Labour. Some employers—probably the University of Toronto would be the best example—decided, when they saw that we were quite committed to making this change, that they were going to make this change ahead of the pack, and did it on a voluntary basis, which I think was an admirable way to go. From questioning the gentleman who was here yesterday from OCUFA, my understanding of the answer he gave was that there are three or four other institutions that are taking a similar approach to this.

Certainly, as with any legislation, we were provided with a variety of opinions as to what the effective date should be, based on a range. Some people were asking us to go back in time and make it retroactive; others were asking to go as far as seven years into the future. We felt that the proposal that's being put forward, a one-year provision to allow for employers to bring plans up to date

that would allow for an ending of mandatory retirement, is reasonable under the circumstances.

But Mr. Kormos is right. As with any legislation, there's a cut-off date, there's an effective date. Things like drinking ages—you can think of a variety of legislation that is date- or age-sensitive. Unfortunately, some people will be captured by it and some people will not be captured by it.

The Chair: Any further commentary? Seeing none, we will now proceed, if it be the will of the committee, to the vote.

Shall section 8 carry? All those in favour? All those opposed? I declare section 8 to have carried.

We will now proceed to consideration of section 9. Is there any general commentary on section 9?

Mr. Kormos: I'm going to use this opportunity simply to summarize New Democrats' concerns around the bill. To suggest that workers, people, have not been able to work beyond the age of 65 is not accurate. There's no law that prohibits people working beyond the age of 65. What there has been is a long-fought-for convention around retirement age—and long fought for. I am, while far from being the oldest person among members of the Legislature in this room, old enough to remember those struggles, particularly post-war, into the 1950s and even early 1960s, by workers around 40-hour workweeks, and certainly around retirement age.

This bill is going to change the culture significantly. We know that people work beyond the age of 65. Some, like university professors, do so because they have a passion for the work they do. Others—I suspect the vast majority—do it because they have no choice, because they don't have pensions or, if they do have pensions, the pensions are inadequate or they've discovered that the pension fund is bankrupt and they're getting 50 cents on the dollar. They aren't given any comfort by an adequate pension benefit guarantee fund.

Where I come from, the people I live with dream about retiring early. The Ontario Lottery and Gaming Corporation's whole advertising theme is, "Buy a lottery ticket and retire"—the freedom of being wealthy.

Trust me, when you work in a steel mill, when you work in a carborundum factory—I'll tell you, as a visitor to a steel mill, one circle of the catwalk around the arc furnace, with the molten steel bubbling and splashing two feet away from your thighs and the burns in your clothing, will assure you that when you work in that steel mill your ambition is to get the heck out of there as soon as you possibly can, before you die, because people are killed in these factories, of course, on a daily basis—regrettably, tragically—or before you poison yourself so you die far before your time.

I'm not suggesting that you haven't, but think about spending a day with a bricklayer or a carpenter or a plumber working on high-rise buildings here in Toronto. It's either the intense heat of the summer or it's the bitter cold. Trust me, if you're a bricklayer or a carpenter, if you're putting up an iron structure, you're still doing it in January and February.

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Believe me, these good people aren't begging for the opportunity to work beyond the age of 65. Good union movements for these people have been struggling to get them adequate levels of pension at an earlier and earlier age, because your body, when you're doing things like laying brick or block, simply doesn't permit you to work even to the age of 65. It's the exceptional, the rare, body that will accommodate that type of work.

I don't care whether it's the auto assembly worker. Go to an auto assembly line, Chair—you may well have—and merely witness that worker around the line doing the same action over and over again. As that dashboard rolls past it, they're installing the speedometer cable. Your carpal tunnel—you get a sympathy ache within minutes of watching that worker perform that job. Again, those workers don't fantasize about working into their late 60s and early 70s. They look forward to as early a retirement as possible.

The issue here is really about adequacy of pensions, and our concern as New Democrats is that this bill avoids the real debate that should be taking place. Sixty-five isn't an imaginary age. It's an age that was targeted by workers and their trade unions as an appropriate retirement age. As you well know, the whole theme of Freedom 55 is an ad campaign around private pensions, mutual fund investments, many of which took a hit when that thief John Roth from Nortel took Nortel down and so many senior citizens in this province and their savings with it, either as direct investors or as mutual fund owners.

When I say, "Change the culture," I'm just incredibly concerned about abandoning 65 as a target date for retirement. Again, you and I know full well that university professors, college professors, are the people who have been litigating this. We know what the Supreme Court of Canada said about the Human Rights Code and the retirement age. They agreed that *prima facie* was discriminatory, and they based it on a number of considerations. I'm sure everybody here has read that judgment, a very well written and lucid one. It was a justifiable discrimination because, among other things, it reinforced the concept that people should have retirements. So I'm sorry, university professors and college professors; it's easy for you to say, "We want to keep working," because your work—and I'm not diminishing it—is not the work of the steelworker or the auto plant worker or the foundry worker.

Drop-forge, down in one of the drop-forges in Welland just a couple of weeks ago: You know, they're tethered to their machines. The workers are chained to their machines—not in any negative sense. It's so their hands can't extend far enough to be caught in the hammer as it drops. So the hammer worker is chained, handcuffed to the machine. It's a safety device to prevent them from extending their hand far enough. The older ones—you see, if you come from a town where I am, you know who worked in the drop-forges. They're all the guys who had hearing aids when they were 55, the older

ones with the digits missing. They can give you the finger just by waving friendly at you, because the other four are gone.

You know who worked in the pipe mill because you see the canes at a very early age, because their backs and hips are gone. Even, quite frankly, the call centre—do you know that the largest single employer down in Welland is Canadian Tire Acceptance? We don't begrudge them those jobs. It's the largest single employer now in that old steel town of Welland: over 600 employees, many of them women, as we all know; no workers' comp. coverage because it's a financial institution. The injury there: repetitive strain injury. I'll bet you know, because you've talked to people; I know you have. The intensity of the pain of repetitive strain—carpal tunnel, for instance—is agonizing. You've had occasion, as have other members, to deal with chronic pain, back pain. Once a back is injured, that means that person will never again have a night's sleep that isn't interrupted at least four, five, six, seven, eight times unless they're so doped up that they're hung over and groggy in the morning from the sleeping pills and painkillers. When we're approaching this debate, those are the workers the New Democrats are talking about.

We're concerned, and Mr. Klees raised very clear and legitimate concerns, about the paucity of data. His concerns would be even more valid if it weren't for the fact that this legislation accommodates those bosses. The other cost would be only as much as the bosses want it to be, because they have the capacity, in this legislation, to not provide those benefits, insurance coverages etc. for those workers over 65. If you could know that every day a worker works beyond the age of 65, and therefore doesn't start collecting his or her defined benefit pension, that is a gift to the bosses in terms of the funding of that pension plan. Every day that you work after the age of 65, it's a day that you're not collecting the pension. You're also one day closer to your death.

I don't see this as a healthy direction for us to be taking in Ontario. Ms. Wynne, amongst others—and I have the highest regard for Ms. Wynne—talked about women who remove themselves from the workplace, because it's mostly women who stay home to parent, and lose 10 or 15 years of pension contribution, and the dilemma they're in and the fact that working beyond 65 will accommodate them because it will allow them to pick up those pension benefits. But to what end? Every day they work beyond the age of 65, it's one day closer to their death. They may never end up collecting those pensions once they've worked the additional 10 years to earn them.

The issue really is, again, adequacy of pension; the issue is ensuring that the work that parents do, raising children in their homes—and it's mostly women, although from time to time men do it—has value attached to it for the purpose of making it pensionable earnings. It's not a bizarre proposition, because women who were mothers and stayed at home to care for kids and care for their households—in divorce litigation, there are

monetary values attached to that, and not inappropriately. It's not wacky to suggest that there be monetary value attached to non-traditional, non-income-earning work like the work that parents do, in most cases mothers.

There was reference made to the plight of new Canadians, immigrants who come to this country who are perhaps in their 30s and 40s, even more so in their 50s, who aren't able to work long enough before the age of 65, such that they're eligible for pensions. Once again, I say that calls for discussion around the adequacy of things like income supports for senior citizens, for people who are beyond the age of 65, not just CPP, because that's income derived from their input during their traditional income-earning work years. I'm talking about social security and the adequacy of it. I regret that we're debating this kind of legislation when we really should be talking about a guaranteed annual income. Oh, what a dated concept. That takes us back to the 1960s, doesn't it? But it's a concept that has never been more relevant, in my view.

I concur with the positions put forward by the Canadian Auto Workers here yesterday, when Tony Wohlfarth addressed this committee. I share his concern and regret that the trade union movement would no longer be able to negotiate a retirement age that binds the company as well as its members. I share the concern of the Canadian Auto Workers and other workers and their unions around the two classes of workers that this bill is creating—one class of workers being those under 65, and the other class of workers being those 65 and older. Specifically, that's section 7 of the bill and section 1 of the bill, and the amendments that were brought by the government.

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Our motion, striking out subsection 5—that is to say, the NDP motion striking out subsection 5 of section 1—was an effort to address this, but of course the government came back and restored section 5 and all of its egregious provisions. I think people had better be careful what they wish for.

I see this as somewhat akin to Sunday shopping. I remember that debate well. Those of us who were opposed to wide-open Sunday shopping have been vindicated by history, even that relatively short history, because indeed Sunday, as a common pause day, if nothing else, has become just another day of the week, to the point where it's harder and harder for workers to negotiate overtime, for instance, for working on Sunday, because it's just another day of the week.

Classrooms in universities and colleges are used on Sunday because it's just another day of the week. If we don't think—I don't want to be overly dramatic—that abolishing that common pause day and the tradition associated with it hasn't had a societal impact in terms of families and neighbourhoods and some of the tragic things we're witnessing now in terms of the breakdown of communities—I'm talking specifically about the things in Toronto: the tragic succession of violent murders and shootings. Look, I'm not saying that if we

had maintained a common pause day, things that transpired never would have transpired, but if we don't think that doesn't have some part to play, then we're simply not thinking right.

So I tell you—and it comes as no surprise, I'm sure, to you or other members of this committee—New Democrats can't and won't support this legislation. To those people who intend to utilize it, I suppose I can say I wish them well, but for the fact that I wish their focuses had been on this whole business of ensuring that people can retire with sufficient income so they can retire at an earlier age rather than a later age, so they can retire with dignity, and so that in their retirement they can do the things that they couldn't do when they were working. They can help raise their grandkids, they can volunteer, they can teach English to new Canadians, they can travel overseas as ESL teachers in any number of countries, or they can just kick back, put their feet up and drink beer. There's nothing wrong with that either, after a lifetime of hard work.

Thank you kindly, Chair. I'll be calling for a recorded vote on this and subsequent votes this morning.

The Chair: Thank you, Mr. Kormos. The floor is open for any further general comments on section 9.

Mr. Racco: Very quickly, I just want to make sure that Mr. Kormos, I'm sure, is aware that there are people who believe in that for different reasons than maybe he and I do. For them, Sunday is just like Saturday for me, for instance. So when he makes those statements, I think we should also keep in mind that some members of our community do use Sunday equal to what would be Saturday to me. Therefore, for them, flexibility is significant with employment.

The Chair: Are there any further comments? Seeing none, we'll now proceed to the recorded vote of section 9.

Ayes

Brownell, Flynn, Racco.

Nays

Kormos.

The Chair: I declare section 9 carried.

We now proceed to consideration of the title of the bill. This is also open to general commentary. Are there any comments on this? We'll proceed to the vote.

Mr. Kormos: Recorded vote, please.

The Chair: Shall the title of the bill carry?

Ayes

Brownell, Flynn, Racco.

Nays

Kormos.

The Chair: I declare this particular item carried.

Shall Bill 211, as amended, carry?

Mr. Kormos: Chair, if I may: This is the opportunity for those members who feel that there has been inadequate data made available to the Legislature for them to vote against referring this bill back to the House and indicate clearly that this bill belongs in committee for further consideration.

I'll be asking for a recorded vote on this, please.

The Chair: Thank you for your remarks, Mr. Kormos. We'll proceed to a recorded vote unless there is any further commentary.

Shall Bill 211, as amended, carry?

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare Bill 211, as amended, to have carried.

Lastly, shall I report the bill, as amended, to the House, presumably today?

Mr. Kormos: Recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: Thank you for your consideration and attention today. There being no further business before this committee, seeing none, I declare the committee adjourned.

The committee adjourned at 1138.

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