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**Official Report
of Debates
(Hansard)**

Wednesday 4 December 2013

**Journal
des débats
(Hansard)**

Mercredi 4 décembre 2013

**Standing Committee on
the Legislative Assembly**

Protecting Employees'
Tips Act, 2013

**Comité permanent de
l'Assemblée législative**

Loi de 2013 sur la protection
du pourboire des employés

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Wednesday 4 December 2013

Mercredi 4 décembre 2013

The committee met at 1206 in committee room 1.

**PROTECTING EMPLOYEES'
TIPS ACT, 2013**

**LOI DE 2013 SUR LA PROTECTION
DU POURBOIRE DES EMPLOYÉS**

Consideration of the following bill:

Bill 49, An Act to amend the Employment Standards Act, 2000 with respect to tips and other gratuities / *Projet de loi 49, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne les pourboires et autres gratifications.*

The Chair (Mr. Garfield Dunlop): We'll call the meeting to order. We're here today to discuss the clause-by-clause of Bill 49.

Interjection.

The Chair (Mr. Garfield Dunlop): We have a number of amendments, as Trevor has just mentioned. I'd like to ask each of the caucuses if they would like to have an opening statement. I'll start with Mr. Prue, who is the mover of the bill. Would you like to make any kind of an opening statement, Mr. Prue?

Mr. Michael Prue: A very short one, because I want to make sure that we get finished today. We only have three hours.

I'd like to thank the members for coming out today. I'd like to thank both the government and the official opposition for their thoughts on the bill and for putting in amendments that, in most cases, will strengthen the bill. I do have some concerns, but we'll get into those in the debate.

I want to say that there are many, many servers out there—hundreds of thousands of them—who have been looking forward to this for a long time, and I'm hoping, through the committee process, that we can come to the best possible decision and go forward with the bill. It would be very nice if there could be some unanimity, after we've discussed all the various options, and that it go forward in whatever iteration it finally ends up in. Thank you very much, Mr. Chair.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Prue. Would the government members like to make an opening statement? Nothing? Okay. The official opposition? Mr. Barrett.

Mr. Toby Barrett: Yes, thank you, Chair. I've just received the government motions, so I haven't had a

chance to read them, but I'm heartened to see that it looks like there are some definitions here in the government motions. I think that's important, because the legislation that we're looking at is one sentence. That concerns me. It concerns me kind of in the same way that a one-day piece of legislation, on occasion, gets passed, and I don't think that's a good idea. I am concerned when we have a piece of legislation where there's only one sentence. Even 100 years ago, legislation that came before this Legislature in Upper Canada was much shorter than a lot of the legislation now, but I don't know whether there was any one-sentence legislation.

There weren't any definitions in there, and I think it is important that we pin down just what we are talking about with these various words like "employer" and "tipping" and "tip-out." One dictionary, Merriam-Webster, defines a tip or a gratuity—again, another word for a tip, and I know that banquet halls seem to talk more about gratuities than tips. Again, a tip or gratuity is something given voluntarily or beyond obligation, usually, for some service. It seems to be a—it has become a social norm. Certainly I see it in Canada and the United States. It doesn't really seem to be related anymore to the level of service that you're getting from the server, when I refer to the restaurant industry, or the level of service that you get from the cook in the back kitchen or the person washing the dishes, where it's even more difficult to determine the level of service.

The level of service in a taxi cab—I don't know. With me it sometimes relates to the quality of the conversation or the interest in the conversation that you have riding a cab, if you're interested in conversation.

The level of service with a haircut: I guess that's something we all measure. Many of us usually have the same person over and over again, and that probably has an influence on how much we tip.

There are a lot of countries that I've travelled in—you don't tip. It's not considered part of the social norm, regardless of the level of service.

Tips and wages, when you compare the two—certainly, in the restaurant industry, as I understand, tips are a very significant component of the amount of money that does change hands. In chatting with people in the industry, in many cases for the front-line server it can represent a very significant amount of their total compensation, their total salary; oftentimes they make more money in tips than they do in their actual wages. There's

an estimate in Canada that tips represent something like \$4 billion a year in Canada—

The Chair (Mr. Garfield Dunlop): Are you—a lot of these things you can—

Mr. Toby Barrett: Did I run out of time?

The Chair (Mr. Garfield Dunlop): No, we just asked for a short opening statement. These are things you can all discuss after in different parts of the bill, so can you just kind of wrap it up there?

Mr. Vic Dhillon: Do you do that at caucus?

Mr. Toby Barrett: Actually, in caucus I am fairly brief.

The Chair (Mr. Garfield Dunlop): I just want a brief opening statement on it and I'd like you to wrap it up and then we'll get into the amendments.

Mr. Toby Barrett: Okay. I should ask, Chair, is there a time limit?

The Chair (Mr. Garfield Dunlop): There's not a time limit on anything, but we just had a short opening statement. That's all I'm asking for.

Mr. Toby Barrett: Yes, okay.

The Chair (Mr. Garfield Dunlop): I wasn't expecting a 15- or 20-minute opening statement. In fact, I'm sorry. You can speak up to 20 minutes at a time at any point during this. If you want to go on, I guess you can possibly do it. But I just was hoping you could do an opening statement so we can get on with the amendments. Go ahead.

Mr. Toby Barrett: I do know, with respect to the definition of an employer—I mean, I was just talking about the definition of tipping—that there was some confusion in this committee as well and there is confusion out there as far as at what point an employer should receive a portion of a tip. I know the NDP feels that this sentence, this one-sentence bill is very clear on that, but I do know out there that there is some confusion and some concern. Maybe that concern isn't warranted because it is only one sentence, but I do appreciate what the government is doing in this first amendment. I haven't had a chance to read much of it, but they are laying out some definitions. I think that's very important. I don't think this committee should have its name attached to a piece of legislation that really isn't clear on what these definitions are. Do you see anything you want to talk about? I didn't set my watch for—

Mr. Jack MacLaren: Are we going to have another opportunity?

The Chair (Mr. Garfield Dunlop): You're going to be able to speak to every amendment.

Mr. Jack MacLaren: Okay.

The Chair (Mr. Garfield Dunlop): All right, so that concludes the opening statements by everyone. I'm now going to go into the first motion, which is section 1, government motion 14.1. You will have to read it, by the way—whoever is moving the motion.

Mr. Vic Dhillon: The whole thing?

The Chair (Mr. Garfield Dunlop): You'll have to read the whole thing, yes.

Mr. Vic Dhillon: All right. I move that part V.1 of the Act, as set out in section 1 of the bill, be struck out and the following substituted:

“Part V.1

“Employee tips and other gratuities

“Definition

“14.1(1) Subject to subsection (2), in this part,

“‘tip or other gratuity’ means,

“(a) a payment voluntarily made to or left for an employee by a customer of the employee's employer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared by the employee with other employees,

“(b) a payment voluntarily made to an employer by a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees;

“(c) a payment of a service charge or similar charge imposed by an employer on a customer in such circumstances that a reasonable person would be likely to infer that the customer assumed that the payment would be redistributed to an employee or employees; and

“(d) such other payments as may be prescribed.

“Same

“(2) ‘Tip or other gratuity’ does not include such payments as may be prescribed.

“Prohibition re: tips or other gratuities

“(3) An employer shall not withhold tips or other gratuities from an employee, make a deduction from an employee's tips or other gratuities or cause the employee to return or give his or her tips or other gratuities to the employer unless authorized to do so under this section.

“Statute or court order

“(4) An employer may withhold or make a deduction from an employee's tip or other gratuities or cause the employee to return or give them to the employer if a statute of Ontario or Canada or a court order authorizes it.

“Exception

“(5) Subsection (4) does not apply if the statute or order requires the employer to remit the withheld, deducted, returned or given tips or other gratuities to a third person and the employer fails to do so.

“Pooling of tips or other gratuities

“(6) An employer may withhold or make a deduction from an employee's tips or other gratuities or cause the employee to return or give them to the employer if the employer collects and redistributes tips or other gratuities among some or all of the employer's employees.

“Employer etc. not to share in tips or other gratuities

“(7) Subject to subsections (8) and (9), an employer or a director or shareholder of an employer may not share in tips or other gratuities redistributed under subsection (6).

“Exception—sole proprietor, partner

“(8) An employer who is a sole proprietor or a partner in a partnership may share in tips or other gratuities redistributed under subsection (6) if he or she regularly

performs to a substantial degree the same work performed by,

“(a) some or all of the employees who share in the redistribution; or

“(b) employees of other employers in the same industry who commonly receive or share tips or other gratuities.

“Same—director, shareholder

“(9) A director or shareholder of an employer may share in tips or other gratuities redistributed under subsection (6) if he or she regularly performs to a substantial degree the same work performed by,

“(a) some or all of the employees who share in the redistribution; or

“(b) employees of other employers in the same industry who commonly receive or share tips or other gratuities.

“Transition—collective agreements

“(10) If a collective agreement that is in effect on the day section 1 of the Protecting Employees' Tips Act, 2013 comes into force contains a provision that addresses the treatment of employee tips or other gratuities and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

“Same—expiry of agreement

“(11) Following the expiry of a collective agreement described in subsection (10), if the provision that addresses the treatment of employee tips or other gratuities remains in effect, that subsection continues to apply to that provision, with necessary modifications, until a new or renewal agreement comes into effect.

“Same—renewed or new agreement

“(12) Subsection (10) does not apply to a collective agreement that is made or renewed on or after the day section 1 of the Protecting Employees' Tips Act, 2013 comes into force.

“Enforcement

“(13) If an employer contravenes subsection (3), the amount withheld, deducted, returned or given is a debt owing to the employee and is enforceable under this act as if it were wages owing to the employee.”

The Chair (Mr. Garfield Dunlop): Thanks very much, Mr. Dhillon. Did you have any explanation on that?

Mr. Vic Dhillon: Yes. This just summarizes what's in the bill and clarifies our position on some of the issues that we discussed.

Mr. Bas Balkissoon: It's more details than the one sentence.

The Chair (Mr. Garfield Dunlop): Okay, so that's your explanation right now?

Mr. Vic Dhillon: Yes.

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The Chair (Mr. Garfield Dunlop): Debate on the amendment? Anybody?

Mr. Toby Barrett: Debate on this amendment?

The Chair (Mr. Garfield Dunlop): Which he just read.

Ms. Cindy Forster: What's the amendment?

The Chair (Mr. Garfield Dunlop): The whole thing.

Mr. Toby Barrett: Is there a time limit on reading amendments?

The Chair (Mr. Garfield Dunlop): Yeah. He wasn't 20 minutes.

Any questions on this? Debate on what he just—

Mr. Toby Barrett: So we do have a definition of a “tip or gratuity,” which looks like it's the same—it's defined as the same word in this legislation. It's a little different than what I was reading here. I guess my question is, we also have to debate an amendment to this particular motion in the next amendment from the NDP.

The Chair (Mr. Garfield Dunlop): There are four or five amendments now, I believe, on this—

Mr. Toby Barrett: Yeah, there's four or five, but I notice this one's a little different. The next amendment is an amendment to this particular motion.

The Chair (Mr. Garfield Dunlop): Right.

Mr. Toby Barrett: It's not an amendment to the one sentence as such, I guess.

The Chair (Mr. Garfield Dunlop): That's right. That's correct.

Mr. Toby Barrett: So what is the process?

The Chair (Mr. Garfield Dunlop): We've got a motion. We're debating that motion right now, which he read, and we're asking each caucus to make a comment on it. There may or may not be amendments, but it looks like there will definitely be amendments to this one because I see five of them on my list here.

Mr. Toby Barrett: But we would vote on this first and then we discuss—

The Chair (Mr. Garfield Dunlop): No.

Mr. Toby Barrett: We don't vote on this?

The Clerk of the Committee (Mr. Trevor Day): No.

Mr. Bas Balkissoon: No, on new amendments first. If you have an amendment, move it and we'll—

The Clerk of the Committee (Mr. Trevor Day): Okay. So what we have now is, we have an amendment to the bill on the floor. Members will have an opportunity to speak about that amendment. In the course of that debate, a member may move an amendment to that amendment, and Mr. Prue has signalled his intention to move a number of them. When he has the floor, he'll have an opportunity to move one of these, but until he does, there's an opportunity to debate this particular amendment in the current form.

Mr. Toby Barrett: So the NDP should probably make their motion before we vote on this, or does that matter?

The Clerk of the Committee (Mr. Trevor Day): What will happen is, should they move an amendment to this, we will vote on any amendments to the motion and then, at the end of that, we will vote on either the motion in its current form or as amended by one of those if they should pass.

Mr. Toby Barrett: Okay, and then we discuss it further—

The Chair (Mr. Garfield Dunlop): Yes.

Mr. Toby Barrett: I see.

Mr. Jack MacLaren: So we're going to discuss this amendment and then vote on it?

The Clerk of the Committee (Mr. Trevor Day): No.

The Chair (Mr. Garfield Dunlop): No. We're going to—

The Clerk of the Committee (Mr. Trevor Day): We're going to discuss this amendment for a time. There will be an opportunity for any member to move amendments to it and then discuss those, and we will vote on each one of those as they come up. When the committee has no further amendments to this particular amendment, then we will vote on this amendment in its perhaps new form or in the form that it's in now.

Mr. Jack MacLaren: Okay.

Mr. Toby Barrett: I've just received this, so I don't know whether we had time to consider any amendments, as the NDP did, to this particular government motion.

Did you just get this now?

The Chair (Mr. Garfield Dunlop): Any further—

Ms. Cindy Forster: No, I got this from my office when I came out of the House.

Mr. Toby Barrett: Okay.

The Chair (Mr. Garfield Dunlop): Do you have any other further comments?

Interjection.

The Chair (Mr. Garfield Dunlop): I'm going to go to the third party, Mr. Prue.

Mr. Michael Prue: Yes. If I could just assuage some fears here that I'm hearing from my colleagues in the Conservatives, when the bill was proposed I knew the bill was very simple. I knew that the bill would never survive as a one-sentence bill. This was not the intent. The intent was to engender discussion, to have people come forward and to listen to deputants, which we did. The deputants came forward and clarified to my mind, and I'm sure all of the committee members' minds, exactly what needed to be contained within the body of the bill.

There were many, many discussions, and then the government, who had been studying this bill for some time, and the ministry, who had been studying it for some time, came to me and said that they had the amendment substantially as here. I did not receive a copy of the amendment until yesterday or the day before yesterday, and immediately went to the legislative counsel, Julia Hood, who is here with us today, and said that I had some concerns and wanted to make amendments to what I understood the government was going to put forward in the final bill.

I'm given to understand from Mr. Balkissoon that he too has an amendment that he wants to put in as well, which the Clerk is now indicating they have. I'm hoping that it can all be wrapped together. I don't think that there are too many controversial things here.

There is one question I would like the government to answer when we get down to, or if we get down to, section 8, because there is no definition of "substantial degree," and there is none in law, because I've already

checked that through Ms. Hood. So I want it on the record what that means, because if a court were to try to determine that, they would want to know what the Legislature intended under those words, "to a substantial degree." I want to ask that at some point.

I'm hoping that we can just go through it maybe line by line or motion by motion. I do have some questions. I'm in the Chair's—

The Chair (Mr. Garfield Dunlop): You can amend the motion now.

Mr. Michael Prue: Do you want me to put my motions in now?

The Chair (Mr. Garfield Dunlop): Yes.

Mr. Michael Prue: All right. Then I will put mine in—

Ms. Cindy Forster: One at a time.

Mr. Michael Prue: One at a time.

The first one is NDP motion v.2.

I move that section 14.1 of the act as set out in government motion 1 be amended by adding the following subsection:

"Same—employee representative

"(6.1) If an employer collects and redistributes tips or other gratuities under subsection (6), an employee representative chosen by the employees of the employer shall be present for and shall participate in the collection and redistribution."

If I might, Mr. Chair—

The Chair (Mr. Garfield Dunlop): Please explain.

Mr. Michael Prue: The rationale for this was that when the employees came here to give deputation, they talked about the employer, in some circumstances, taking the money away, and then they simply got a pay packet with an amount in it. They didn't know how it was distributed. One deputant said that the cooks who were supposed to receive a 1% or 2% cut from those tips had never received anything.

I am mindful of what they do in the province of Quebec and I asked Ms. Hood to look that up. The province of Quebec mandates that where the tips are divided up, a representative of the employees is present to make sure they are satisfied that everybody is getting their cut and that the employer is not keeping it. So this is still allowing the employer to collect the money, but having an employee present to make sure it's distributed fairly.

The Chair (Mr. Garfield Dunlop): Okay. I'll now go to the government members. Those are your comments, then, Mr. Prue?

Mr. Michael Prue: On this particular one, yes.

The Chair (Mr. Garfield Dunlop): Would you like to make any further comments on it?

Mr. Michael Prue: Just on that point? No, I'm just explaining what it is.

The Chair (Mr. Garfield Dunlop): Okay. I'll now go to the government members. Do you have any questions or concerns?

Mr. Vic Dhillon: No concerns. That's fine. We agree with that amendment.

The Chair (Mr. Garfield Dunlop): Okay. We'll go to the official opposition.

Mr. Toby Barrett: With respect to this amendment to the government amendment, the employee representative, that has a nice ring to it. Like I say, I just got this list of amendments. I commend the NDP for whipping this up so quickly on the government amendment, but I've got to consult with somebody before we decide how we're going to vote on this, because I just got this.

The Chair (Mr. Garfield Dunlop): Well, we're voting on it today. I mean—

Mr. Toby Barrett: I know we're voting on it today; I'm just saying I want to talk to somebody first before we vote on it.

Mr. Michael Prue: If I could, I have no objection; I mean, if we could deal with all of them and if my friend wants a 20-minute recess to consult before votes, that's standard practice in most committees and he's more than entitled to it, if he needs to know after hearing the discussion.

The Chair (Mr. Garfield Dunlop): No one has asked for a recess. I'm just—

Mr. Michael Prue: Okay. So if I can go, then, with your permission, Mr. Chair, to the next one?

The Chair (Mr. Garfield Dunlop): We've got Mr. MacLaren first.

Mr. Jack MacLaren: This is certainly worthy legislation. The amendments seem fine. I think we all appreciate that tips, tipping for service, especially in bars, restaurants, things like that, even taxis, is a very important part of a worker's income.

A friend of mine was a server in a bar and she explained to me how it used to work. They did have pooled tips. She would mix drinks behind the bar. There would be other girls who would serve drinks to the customers, and there would be the people at the door that would usher customers in. They had kind of a system where she would get tips at the bar, waitresses out on the floor would get tips, and the doorman, or whatever the proper title for that fellow was, would get no tips. So—

Ms. Cindy Forster: The bouncer.

Mr. Jack MacLaren: The bouncer? Well, of course he'd get tips because he's bigger than everybody else. But that's a different kind of justice, much quicker than what we do here.

1230

So they would have a system that would try to create a fair sharing of the payment, because most of these people are paid a low wage with the expectation that there would be tips. There was an honour system that you explained to me where they would count up at the end of the night how much was sold by the waitress and the drinks server, and they would contribute a percentage of that to, maybe, the owner of the bar or the restaurant, and of course they would trust him to do the right thing. What this legislation is doing is addressing exactly that question: doing the right thing and being fair.

The intention with this girl I know was that the money would actually go to the servers, the drink mixers and the

bouncers, and it may well have, but I'm not sure. In fairness, it seemed to be a good system that was in place, where the owner would collect the money, because you needed some kind of central person. He would collect a portion from the drinks server and the waitresses, and then distribute what should go to the bouncers and the others who didn't get their fair share. That seemed to be a working thing.

Of course, with taxi drivers, it's sort of considered an appropriate thing to do to give them a tip for service offered. Most of us here make pretty good use of cabs in the work we do. We have to move around town and travel, and most of us, I think, are pretty generous when the person who's driving the cab provides good service and is pleasant and, at the end of the time, we're satisfied with the service we receive—you know, the man was polite and considerate, his car was clean and appropriate, and he didn't take the long route around to take us where we wanted to go. Most of us, I think, are very happy to provide a tip to that driver.

Most of these fellows are actually new Canadians. I find that driving around in cabs in Toronto is a great way to get an education, because they're people from all over the world. One of the things that really impresses me is how much they really appreciate democracy, freedom and their constitutional rights, because many of them come from countries where you don't have those kinds of things.

Getting paid fairly is a right. When somebody works, they have a right to expect to be paid in a fair manner. In the case of cab drivers, these fellows work hard. They work long hours for relatively minor wages, and they depend on us to be appropriately generous when it comes time to tip them for the service they provide.

I find it interesting that many of them have a university education, for instance, and they've come here and are driving a cab, or they're working on getting a university education. They come from some very interesting backgrounds, and what I always hear is how much they appreciate being in Canada, how much they appreciate the great government system we have here. Sometimes things happen in the House that I'm glad they're not aware of, because we drag out the time sometimes—I don't know who does that.

But it's always a pleasure to drive with these people, and it kind of reinforces in us why Canada is such a great place and what a wonderful opportunity and privilege it is to live here with our constitutional rights and our freedoms that this country provides for us. These things have been earned in wars and Parliaments over hundreds of years.

This is at a time when I would say we can go right back to—it's part of our Christian British cultural heritage. You can go right back to the Magna Carta of 1215, which was the basis of our democracy, where the common man decided that the king would not rule everything. The king could not come into our houses and could not tax us without the common man's approval. That was the foundation of democracy, and what we fight to retain here.

The Chair (Mr. Garfield Dunlop): Could you speak to the amendment, please?

Mr. Jack MacLaren: Was I digressing? I'm sorry, Mr. Chair.

The Chair (Mr. Garfield Dunlop): You did digress, yes.

Mr. Jack MacLaren: Oh. My apologies. It's just such a—I went from tips to new Canadians to democracy—

The Chair (Mr. Garfield Dunlop): Yes, I understand.

Mr. Jack MacLaren: —and naturally, Magna Carta falls into place.

The Chair (Mr. Garfield Dunlop): Right. Speak to the bill.

Interjection: Of 1215.

Mr. Jack MacLaren: Of 1215, yes.

All right. I had the good fortune of living on the Ottawa River, and, of course, we would occasionally go across the river to an establishment that served beverages, and we'd be tipping there. We were much younger when we did that, and sometimes we were kind of meagre on the tips, so we didn't treat people as well as they should have been. But they were certainly establishments where they would serve drinks and expect to have tips. We should have done better, and, certainly, now that I'm a little older and more appreciative of their right to receive a decent income—and decent tipping is part of that—I would say that I'm more conscientious of doing a good job of that.

Tips are such an essential part of it. I know that my wife had a job in the summer at a tourist resort, when she was young, where the owner of the tourist resort was the cause of what we're talking about here. He would take the tips left with the hotel bills at the end of the week, and the girls often saw little or none of that. That's the problem that we're trying to correct here, so this is a very good and worthy thing. We know that that has happened in the past, and I guess, unfortunately, it's still happening today, in the present time, so we do need to correct that.

I'm not sure if this is going to be bulletproof. It's hard even to craft perfect legislation. If you're dealing with people who are ill-minded, dishonest or not fair, we can never beat those kinds of situations. We can just do the best we can to come up with the most comprehensive piece of legislation we can; hopefully it will make things much better and eliminate as much of the abuse of the system as possible or discourage owners from keeping the money that is meant for servers, staff people and employees, and that it's properly shared.

We know that these kinds of things happen, we know that it's a problem and it's wonderful to see this legislation here today to address those things. I'm hoping, with all these amendments that we're going to be looking at, that we can sort through and try to cover as many of the little fine points that potentially could be cracks in the armour of what otherwise would be a good piece of legislation, and do it the best way we possibly can.

Ms. Cindy Forster: When are we actually going to get to it?

Mr. Jack MacLaren: I'm just about there. It's just that there aren't many other areas where tips are awarded to people as well, and it's hard to think of all those various occasions. You have hotels; you have golf courses where people do various works and are caddies. We're going to have to try to think of all of those things so that everybody is treated equally and fairly and the legislation is as complete as it can be.

I would say at this point that the legislation appears to be good. We look forward to further discussion of the amendments. Mr. Chair, I hope I'll have the opportunity to comment again as we go along with some of the amendments as they come about.

The Chair (Mr. Garfield Dunlop): You will. For each amendment, we can comment.

Mr. Jack MacLaren: All right. On that note, I'd like to thank you very much for giving me some time.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. MacLaren. Further comments or further debate on the amendment to the amendment?

Mr. Jack MacLaren: I'd like to call for a recess to deliberate with our caucus members on some of the questions that Mr. Barrett and I have.

The Chair (Mr. Garfield Dunlop): Before you can have the recess, is there any further debate? Right after the recess, we'll come in and we'll be voting on this, okay? How long would you like to recess?

Mr. Jack MacLaren: For 20 minutes, please.

The Chair (Mr. Garfield Dunlop): A 20-minute recess, everyone. We'll be back here at 1 o'clock.

The committee recessed from 1238 to 1258.

The Chair (Mr. Garfield Dunlop): Okay, folks, we'll bring the committee back to order. Our first item is voting on the amendment by Mr. Prue, 1.1, on the government motion. All those in favour of Mr. Prue's amendment? That's carried.

We now go to Mr. Balkissoon. It's 1.1.1. Mr. Balkissoon, you've got a motion?

Mr. Bas Balkissoon: I've got an amendment.

Mr. Toby Barrett: Actually, we just voted on this amendment to the original government motion. Do we not debate the original government motion?

The Chair (Mr. Garfield Dunlop): No. There are more motions to come.

Mr. Bas Balkissoon: I've got an amendment to the government motion.

The Chair (Mr. Garfield Dunlop): There are more amendments coming.

Mr. Bas Balkissoon: We do it at the end.

Mr. Toby Barrett: I beg your pardon? We debate them when, sorry?

Mr. Bas Balkissoon: I am moving an amendment to the government's motion, similar to what Mr. Prue did.

Mr. Toby Barrett: Okay.

The Chair (Mr. Garfield Dunlop): There are a number of them here.

Mr. Toby Barrett: Yes.

The Chair (Mr. Garfield Dunlop): Okay?

Mr. Toby Barrett: That's 1.1.1, is it?

The Chair (Mr. Garfield Dunlop): Yes, 1.1.1. Mr. Balkissoon?

Mr. Bas Balkissoon: Thank you, Mr. Chair. I move that section 14.1 of the act, as set out in government motion 1, be amended by adding the following subsection—and I know you have a copy of it, and I have one small change; I'm going to read it with the change, and I would ask you to just change your own copy:

“Same—exception

“(6.1) An employer”—instead of the word “may,” I'm changing it to “shall,” to make it stronger—“shall not redistribute tips or other gratuities under subsection (6) to such employees as may be prescribed.”

If I could just explain that and make a comment so that everybody understands what I'm doing: If you look at section 6, it outlines the gratuities among some or all of the employer's employees, and it's not definitive.

If some of you may remember, we had two groups from banquet halls and hotel facilities that basically complained about employees who were not part of an event who received a gratuity or participated in a gratuity. I want to make sure that just those employees who were part of the service that was relevant to the gratuity get the gratuity. I would leave it to prescribe those employees such as a booking agent, as an example, cannot participate, or a manager of the facility but not part of the event participating.

I'm moving this motion and I hope that everybody will support it.

The Chair (Mr. Garfield Dunlop): Okay, any further debate on this motion by Mr. Balkissoon? Mr. Barrett?

Mr. Toby Barrett: When you were explaining this government—I guess it's a government motion or a government amendment, actually.

The Chair (Mr. Garfield Dunlop): It's an amendment to the amendment.

Mr. Toby Barrett: It's 1.1.1.

In your explanation—and you did talk about the facility gratuities, but I don't see the words “facility gratuity” in here. Now, you say “other gratuities.” Again, I know we're at the beginning of the legislation and I know this is an amendment to the government motion, which did talk about definitions. But what we're lacking, in my view, is a definition of this facility gratuity, these automatic gratuity charges that seem very common now; they're added to wedding parties or groups that book a large hall or have a convention. The assumption is they cover a lot more than just tips or gratuities; they cover other expenses of running the hall and I would think we agree that has to be more transparent.

Again, it goes back to a one-sentence bill where we're discussing terms like a gratuity or a tip and it may be unclear just what we mean by those terms. I think of even private members' bills; at the beginning there just seems to be a list of definitions of exactly what we're talking about.

I know in this legislation, for that matter, even in this 1.1.1 motion, you talk about employer and employee. We

don't have a definition of employer in front of us or a definition of employee, and there's been some confusion there, especially when we do talk about the accusations of an employer dipping into a tip jar or a concern that we heard in the deputations before this committee. I know there was talk of tip-outs.

I know the legislation defines what a tip is, but it doesn't say what a tip-out is, and I know there was some debate here. Someone kind of explained it to me; I didn't understand the difference between tip-outs and tip pooling. I'm still unclear on that. I know they had a submission, I think, that gave us those definitions.

I assumed a tip-out was the same as pooling. I mean, tip-outs are pooled and they're redistributed among various support positions. I think when this process first started, it was not only, say, for the server, but it may be a busboy or some other front-line person. Then more recently—and this is a good thing—tip-outs also were administered to the back office or the back kitchen: the cooks, the dishwashers, other people. It's done as a percentage of sales, as it was explained to us.

I know the legislation does not give us—the government motion gives us the definition of a tip, but not this tip-out business and the fact that it's meant to be split up among other staff.

We've got this whole new system of redistributing income that comes, say, in this case to a restaurant, a redistribution of tip revenue. This legislation, I think we all agree, is designed to provide a bit more control over that process. I mean, it is a law, but it also sends a message. It would perhaps help to have organizations, whether it's groups of employees or management, to have a better system.

It offers some direction on how to make things a little more fair, but we hear other expressions. I don't know whether these definitions have to be in the legislation, that talk about the “house share”—that sounds like a casino to me—or talk about “dine and dash.” I've got an assumption of exactly what that means in my mind, but whether that justifies an employee representative deciding whether a manager should get a share of the tip, or the employer—this is going back to Mr. Prue's amendment. If there's been a dine-and-dash situation that hurts the bottom line of the employer, maybe that's taken out of a manager's pay, or maybe that's taken out of the front-line staff's pay.

To recoup the cost of breakage—I know we even had indication from at least one delegation that we've got to have this kind of system to compensate for the hit they take on credit card purchases. Now, that seems unfair to me, if establishments that are partly based on tipping would ask for legislation to cover off on another problem, which is losing money on credit cards, when there are so many other businesses that receive their payment for services through credit cards but don't have a system of tipping.

Whether it's tipping out or tip-sharing—I don't know whether that's the same definition or not—it's developed over the years in many ways to, in my view, compensate

for inadequate compensation. We have talked about the minimum wage, and then this other special minimum wage for people in the service industry, which seems to be a backwards way of trying to make things more equitable. Obviously the way it is now is inadequate, hence the customer is asked to be part of this whole process of tipping, tipping out, tip sharing and what have you.

I'm just concerned that, if we don't define these things a little more clearly right at the beginning, we may be creating legislation on something that is perhaps unclear to the general public. Do you have any comments on that?

Mr. Jack MacLaren: I have a question. I'm not sure if I'm reading this right or not, but it says that an employer "shall not" redistribute tips to employees, yet in section 6 it says an employer "may" withhold tips to return and give them to other employees. Is that not contradictory, or am I reading that wrong?

Mr. Bas Balkissoon: Mr. Chair, if I could respond to both comments. I would ask my colleague Mr. Barrett if he would just pay attention to the exception in section 8. I think it clarifies a little bit who will participate in tips. If tip-outs confuse him, I think that this whole piece of legislation that is in front of us is because Mr. Prue proposed in his bill that tip-outs not be allowed. This whole piece of legislation is written in that manner. Those who are not entitled to tips should not be collecting them, and I think it's pretty clear.

If I could answer Mr. MacLaren: All I'm doing in section 6 is providing an extension to clarify, by prescribing who is not entitled to tips, if that opportunity is necessary.

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I would give you an example. There was one deputant that was here from a banquet hall. She said the manager who books the hall used to come for about half an hour at the end of a wedding and he was part of the tips, so he'd be there just for half an hour and he was getting an equal share like the others who worked the entire event. She thought that was unfair, and I have to agree with her. So in that case, we can prescribe that such a person, who should really be part of the establishment because they're full-time employees, should be well paid by that establishment and not be entitled to tips. The part-time employees, like the cooks and the waiters and the waitresses and the busboys, would be part of the tips.

So we can prescribe in those situations that they cannot get it. I think that's the whole idea.

I'm just providing an opportunity to clarify those things, whereas if you leave it the way 6 is written, in my mind it would still leave it up to the employees and the establishment to negotiate with the owners of the establishment that this booking agent is not entitled to it. So I'd rather prescribe it.

Mr. Jack MacLaren: I understand what you mean. I'm just asking, if you add that sentence to 6, will it achieve what you want to achieve?

Mr. Bas Balkissoon: The best legal minds have told me it will.

Mr. Jack MacLaren: I'm not a best legal mind. It just seems contradictory to me; 6 is saying an employer may withhold tips and redistribute them to employees, and then your sentence says no.

Mr. Bas Balkissoon: I'm saying no as to who is not entitled.

Mr. Jack MacLaren: That's what you mean by "may be prescribed"?

Mr. Bas Balkissoon: "May be prescribed." That's right.

Mr. Jack MacLaren: That sounds like a lawyer wrote it.

Mr. Toby Barrett: My concern when I read something like that—and I know we hear from people who are trying to run some of the smaller businesses like these businesses, and we do hear this. I certainly hear it from farmers, for example. I think during testimony at the witness table here there was the indication that this industry is already heavily regulated; that's what they were telling us. I'm just concerned that this is yet one more piece of bureaucratic red tape, one more addition to the regulatory burden.

If the government gets involved in the allocation of this kind of income, is this going to mean more forms, more paperwork, more things to fill out? Or is it still under the administration of an employee representative, as the NDP have indicated, where somebody basically just kind of counts the money and they agree on a share and they do this every night, for example, and they know what to do?

I'm just concerned that so much of the industry, we were told in this committee, operate on very low margins. Obviously, the ones that start up are small business. A lot of small business—there are lots of start-ups, which is good. Unfortunately, we never really hear that much about the ones that fail or the ones that close up, that, especially in the tourism industry, run for the summer, and maybe they make it till Christmas. January and February, they are closed; there's an empty building. And then a new person comes in in the springtime.

I'm also concerned that this kind of an amendment, where it says the employer may not redistribute tips—does this give the impression that the employer is mistreating service staff? That was a concern they had; in fact, I see this in the summary of recommendations that was put forward by legislative research, I guess it would be. I really appreciate getting these kinds of things.

Both CFIB and CFRA felt that this bill gives an unfair impression that all employers in the service industry are mistreating their service staff, and I would hope that this amendment 1.1.1 wouldn't contribute to that kind of perception. Very clearly, we have a law where the government says that you may not redistribute to such employees as may be prescribed—that takes away a function of management. At many of the larger restaurants—we heard about the chains—they have managers who are responsible to make sure that the bartending and the dishwashing occur. This takes away part of their management function.

My question is: To what extent does this also take away a portion of income that would go to the managers where they are doing work that may justify them sharing in the tip revenue? Those are some concerns that I have on that.

The Chair (Mr. Garfield Dunlop): Mr. Prue is next.

Mr. Michael Prue: Chair, if I could: Sections 8 and 9 spell out exactly what the managers can and cannot get. They are entitled, in certain circumstances, to take their portion. This is a bit of a red herring. All this amendment does is allow the government to prescribe a class or persons who would not be eligible.

Mr. Balkissoon has talked about the booking agent for a banquet hall. We want to make sure that, when the government says that the booking agent for a banquet hall is not entitled to any portion of the tips, even though they may have booked the room—that's what all this prescription is. The right of owner-managers who actually get their hands dirty and work alongside the staff is protected in sections 8 and 9.

I don't know what this debate is, other than—I'm sorry to say this to my Conservative colleagues, because I love them both, but this seems very dilatory, what's going on here today. We need to be speaking to what is actually in front of us.

This section here talks about someone who is prescribed against getting the money, and this is a broad general prescription that the minister, in his or her wisdom at some future time, can say that the booking agent cannot share. That's all. This is a little tiny section. I agree with it, but it's of no huge consequence.

The Chair (Mr. Garfield Dunlop): Further debate on the amendment, then? Mr. MacLaren?

Mr. Jack MacLaren: Mr. Prue, I ask you: Are you feeling that this motion by the government, as an amendment, is not necessary? Is that what you're—

Mr. Michael Prue: It is a tiny, tiny possibility that some people may try to get around the regulations. There are always people in this country and in this province who try to get around regulations. I am not naive, after 25 years of sitting in municipal and provincial governments.

What this does is, it allows the minister, at some future date, whoever he or she may be, if they see an abuse, to say, "We are prescribing against that abuse or this class of persons obtaining the money," without having to do additional legislation. Is it necessary today? I don't think so. Is it necessary in the future? Maybe, and that's why I'm going to support it.

Mr. Jack MacLaren: If I can make a suggestion, I heard words said here—I think Mr. Barrett was saying that there were comments from one of the people who presented saying that this bill throws a negative light on employers—I forget the exact language. So, if you stroked out the word "not," would it not mean exactly the same thing?

Interjection.

Mr. Jack MacLaren: No?

Ms. Cindy Forster: This is the opposite.

Mr. Jack MacLaren: What?

The Chair (Mr. Garfield Dunlop): Ms. Forster, do you want—

Ms. Cindy Forster: Section 6 talks about who an employer can redistribute tips to, and 6.1 is there to allow the government to exclude somebody in the future who's abusing the system.

Mr. Jack MacLaren: It wouldn't be an exclusion. It would just define who you can give money to. It's more positive. That's all I'm saying. It's cosmetics.

The Chair (Mr. Garfield Dunlop): Further debate? I'll call the question.

Mr. Jack MacLaren: I submit that we make that change, make an amendment—

The Chair (Mr. Garfield Dunlop): Well, then you've got to make an amendment.

Mr. Jack MacLaren: Okay. I make an amendment that we stroke out the word "not."

The Clerk of the Committee (Mr. Trevor Day): We've got an amendment on the floor, and an amendment to the amendment. You can't make two. You've got to vote on one, and then you can pose another.

Mr. Jack MacLaren: Oh. So we vote on this one first?

The Clerk of the Committee (Mr. Trevor Day): You can have an amendment, and an amendment to an amendment, but you can't go further down the ladder. This one has to come off the floor before there's room for another one.

Mr. Jack MacLaren: So we can't make any more amendments?

The Clerk of the Committee (Mr. Trevor Day): Not at this time.

Mr. Jack MacLaren: Okay. Well, Mr. Chair, I'd like to call for a recess for 20 minutes.

The Chair (Mr. Garfield Dunlop): Okay. Recessed.
The committee recessed from 1320 to 1340.

The Chair (Mr. Garfield Dunlop): We'll reconvene. We now have to do the vote on the amendment to the government bill by Mr. Balkissoon; that's 1.1.1.

All those in favour of that? Opposed? That's carried.

We'll now move to NDP motion 1.2. Mr. Prue.

Mr. Michael Prue: I wonder if I might be able to shorten the process, if you would bear with me. If I can just ask a question—I can do it either way. I can read it.

Interjection.

Mr. Michael Prue: I'll ask the question. If I can ask a question of the government, and perhaps of legislative counsel, on the meaning of part (b) in both sections 8 and 9. The reason I had put in the next two motions is that I took it to mean one thing, and it may in fact mean something else. If you can clarify what is meant by 8(b) and 9(b)?

Mr. Bas Balkissoon: Mr. Chair, I'd be happy to, if I could just use an example that may help with his concern. Take, for example, a restaurant where the owner or his partner in the business is actually performing duties that are normally performed in a restaurant. Let's say he's the bartender. He would normally share in the tip pool, so that line allows him to do it; whereas if it wasn't there, he

would not be able to do it, based on the rest of the amendment. It's to allow those who actually perform duties similar to another establishment in a similar industry and are partaking in a pool of tips—it allows that to happen.

Mr. Michael Prue: Would legislative counsel agree that that's what part (b) in both of these sections is intended to do?

Ms. Julia Hood: Yes; for a situation where, using the bartender example, there is only one bartender—so no other person at that particular establishment is doing that work—but industry-wide, there are lots of bartenders who do get tips. I think that's what it's what it's meant to cover.

Mr. Michael Prue: So, for clarity: If the owner is the bartender, he may not be entitled to the tip, but industry-wide, a bartender who was not the owner would get a portion of the tip; therefore, this allows the owner-bartender to share in the tip pool. Is that what this is intended to do?

Mr. Bas Balkissoon: Yes.

Mr. Michael Prue: Okay. That's clearly on the record, and I'm glad that it's on the record. That being the explanation, I would like to withdraw this motion and the following one.

The Chair (Mr. Garfield Dunlop): So you're saying that 1.2 and 1.3 are withdrawn?

Mr. Michael Prue: I'm not moving them. They're withdrawn.

The Chair (Mr. Garfield Dunlop): You're just withdrawing them?

Mr. Michael Prue: I am withdrawing them. Yes.

The Chair (Mr. Garfield Dunlop): Okay. Thank you. That takes us to 1.4, which is again an NDP motion.

Mr. Michael Prue: I'm not withdrawing this one. Okay. If I can read it into the record: I move that subsection 14.1(10) of the act as set out in government motion number 1 be struck out and the following substituted:

“Transition

“(10) If a collective agreement that is in effect on the day section 1 of the Protecting Employees' Tips Act, 2013, comes into force contains a provision that addresses the treatment of employee tips or other gratuities and there is a conflict between the provision of the collective agreement and this section, the provision that provides the greater benefit to the employee prevails.”

If I could explain—

The Chair (Mr. Garfield Dunlop): If you could explain, and then we'll go right to the—

Mr. Michael Prue: —and then we'll go into some debate.

The reason for this explanation is that this is very common practice within most government bills. I'm thinking, first of all, about the Employment Standards Act, which mandates that where changes in the act supersede or are greater than benefits contained in the collective agreement, the Employment Standards Act prevails.

I also remember some time ago, when the government raised minimum wage across the province, the minimum wage act superseded some employee agreements where the minimum wage was suddenly higher than what was contained within the collective agreements in question. Therefore, the employees received the benefit of a new, higher wage, higher than they would have got under their collective agreement.

What I'm saying is, this is the industry standard, and it is a common standard in law. Where laws are changed, the person affected by the law has the benefit of whichever standard is better to them. I'm simply asking that something that has been done for centuries in this country and is a precept of law and something that has been done by this government in other labour relations cases be transferred here, because it would be unfair, I would suggest, to people in unionized places who have contracts that may extend for some period of time to have benefits and privileges which they negotiated in good faith which are actually worse than in places that do not have the benefit of a union.

The Chair (Mr. Garfield Dunlop): Mr. Balkissoon.

Mr. Bas Balkissoon: Mr. Chair, the government will not be supporting this motion, and I'll tell you why. I hear Mr. Prue's argument, but in this particular case, it would have been okay if that collective agreement was singularly set for tips. But I think the agreements that exist today are part of a larger collective agreement for all working conditions in an establishment, and the employer in this particular case may have traded other things to settle the issue with tips, where tips were not governed before.

I think the government's intent in not supporting this is to allow those agreements to expire and let the employer and the employees negotiate the best deal in the next agreement. It may well mean that they do something on behalf of the employer or they do something on behalf of the employees, but it's negotiated and it's not mandated by government. So we're not going to be supporting this.

The Chair (Mr. Garfield Dunlop): Mr. Barrett?

Mr. Toby Barrett: Yes, just further to that—and I appreciate the comments and I appreciate the comment from the government side. We have collective negotiation for a reason; we have collective agreements. By and large, government and government legislation reflect that. I'm surprised to hear that other legislation overrides collective agreements.

I'm not—our labour critic isn't here; this is a labour bill, of course; we realize that. But I guess I agree with Mr. Balkissoon in the sense that collective agreements aren't just about tips; they're not just about wages or salaries. They include so many other—hours of labour; so many other issues—perks, if you will: retirement, early retirement, compensation, really, and—not that I'm asking for a definition of compensation in this motion or in this amendment or in the legislation itself, but collective agreements cover so much. It just seems a little odd. I know that our focus is on tips, but the collective

bargaining process covers safety, the quality of work, management rights and labour rights and so many other things. It just seems like a rifle approach. I know we're looking at things through the lens of tips, but I'm leery to see legislation override the collective bargaining process in the province of Ontario.

The Chair (Mr. Garfield Dunlop): Ms. Forster?

Ms. Cindy Forster: I want to get on the record on this one as well, because I think the government's position on this is totally setting up now two classes of employees who probably earn the least of any employee group in this province. So now we're saying that they may have to wait three years; they may have to wait the rest of their lives if they stay at that particular restaurant and they don't have an employer that will agree to include in their collective agreement a better provision that exists in the Employment Standards Act.

To say, "Tips—this is a new provision": The government introduces all kinds of new legislation every week, every year, in this province, and these servers and busboys and dishwashers should not be precluded from having a superior provision. The ESA deals with issues of holiday pay, vacation pay, overtime, all those kinds of issues. So if the government was to introduce an overtime provision that was better than what's existing in the ESA, are you saying that people who are in collective agreements in this province wouldn't be entitled to that superior condition or to that additional statutory holiday, perhaps?

I think that where you're going with this is wrong. There's no guarantee that in this sector—that is, a right-to-strike sector. These people could end up on the street in a strike to try to gain something that will be included in the Employment Standards Act. I'd like to actually ask legislative counsel if there are any other legislative acts in this province where the legislation does not prevail over collective agreements.

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Ms. Julia Hood: I'm not in a position to answer that question. Does someone from the ministry maybe want to speak to that?

The Chair (Mr. Garfield Dunlop): Just please mention your name, sir.

Mr. John Hill: My name is John Hill. I'm general counsel with the Ministry of Labour's legal services branch. I certainly can't answer the question about whether there's any statute. I can recall a statute where it overrode collective agreements: the Social Contract Act, 1993, is one, so it's not unprecedented.

I don't think, though, that the government motion is overriding collective agreements. It's preserving collective agreements until the next round of bargaining.

Mr. Michael Prue: But if I can just ask: There are hardly any unionized places with servers to begin with, except sometimes in hotels and in the banquet industry, and they're usually—but many of them have two- or three-year agreements. So these people would be expected, then, to wait two or three years for the benefit of the law that comes to everybody right away.

Mr. John Hill: I think that what's in the government bill and what's in your motion are premised on two different situations. I think that what's in the government bill is basically preserving, till the next round of bargaining, certain collective agreements that allow the employer to take a share of tips. The legislation provides that that can continue to prevail—even if it doesn't conform to what would be section 14.1 if this legislation is passed—until the next round of bargaining.

Your motion, if I understand it correctly, is premised on something different, i.e., that the collective agreement is doing something more favourable to employees than would section 14.1 if it is passed. I do understand that. I think that that situation is probably fairly rare—although that's neither here nor there, I suppose—but it might be a situation where, for example, the collective agreement says, "All tips have to go to employees. There can't be any sharing with owners, even working owners." Of course, 14.1—

Mr. Michael Prue: I think you have it backwards. Most of the large places, the big hotels and the banquet centres, take the 15%—which they call a "gratuity" now—and they divvy it up. They give about 10% to the employees, and about 5% goes to management.

What my bill originally, and now the government motion, would do is say that that practice can continue. Although it is outlawed in law, the fact that they have negotiated for something which tomorrow, if this were to become law, would be less—then they are stuck with that, because they signed it.

Mr. John Hill: Yes, I understand that, and the bill does provide that that only goes until they make their next collective agreement. Once they're into the next round of bargaining and they make another collective agreement, at that point, this provision will no longer apply, because it only applies until they make their next collective agreement. But at that point, subsection 5(2) of the Employment Standards Act would apply. It says that if a contract of employment—and that includes a collective agreement—provides a greater right than what an employment standard provides, then the contract of employment prevails.

If you do have a collective agreement that actually gave employees a better deal than what's in 14.1—say, it provided that there's no sharing of tips, even with working owners—then that will prevail.

Ms. Cindy Forster: But what happens if they aren't able to negotiate a better provision in the collective agreement and they still are sharing that 15%, with 5% going to the manager?

Mr. John Hill: It wouldn't matter, because after they make their next collective agreement the exception is no longer available. At that point, subsection 5(2) of the Employment Standards Act would say, "Okay, you've got a contract of employment that gives you less protection than 14.1; therefore, 14.1 prevails over your collective agreement to that extent."

Ms. Cindy Forster: So it will apply after the next collective agreement is in effect?

Mr. John Hill: That's right.

Ms. Cindy Forster: Okay.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Barrett?

Mr. Toby Barrett: Yes. Thank you, Chair. Just on this advice with respect to overriding collective agreements: In my limited knowledge, that's something that you would only resort to in an emergency or a fiscal crisis. You made mention of the social contract, and that was done maybe 20 or 22 years ago.

Well, recently, we had Bill 115, which essentially overrode a collective agreement. That was what, two summers ago? The concern at that time was a fiscal government-spending concern. Under law, it is justified, but we accept that only in a crisis; it may be an economic crisis, or it may be a fiscal crisis with respect to government spending. But I'd just hate to have this in here and to have the right to use a hammer on something that I see would be more in the category of a tack. I think it's too much to do with this tip issue.

Now, you made mention of unfairness—two tiers or what have you. Of course, we are aware of a unionized cook. By and large—I think the Canadian Labour Congress would attest to this—a unionized cook does make more money than a non-unionized cook, on average. In individual cases, there are variations, but on average, there is a two-tiered system. If you're a cook and you're unionized, my assumption is that you're making more money than a cook who's non-unionized.

If you're a cook working in, say, a small mom-and-pop restaurant, it seems unfair. You are making considerably less money than if you were a cook working in a kitchen in a correctional centre, if you were a member of a government workplace. A cook working for the government makes considerably more money—and not just in wages. If you look at total compensation, there are other factors. It is unfair.

We can talk about pay equity, but there's no pay equity as far as the differences between a cook working in a small restaurant versus a cook working for a government agency or a correctional centre, for example, as far as job security, perks, perhaps pension and things like that. There is a two-tiered system, both public sector/private sector and union/non-union—very clearly, a two-tiered system. I don't think it's fair. There is a two-tiered—

The Chair (Mr. Garfield Dunlop): Is that a question?

Mr. Toby Barrett: It's not a question, no.

The Chair (Mr. Garfield Dunlop): It's just a statement?

Mr. Toby Barrett: Just two issues that were raised that I think are important.

The Chair (Mr. Garfield Dunlop): Okay, fine. Further debate? Okay. I'm going to call the question on this motion. All those in favour?

Mr. Michael Prue: I'd like to ask for a recorded vote on this.

Ayes

Forster, Prue.

Nays

Balkissoon, Barrett, Crack, Dhillon, MacLaren, Mangat.

The Chair (Mr. Garfield Dunlop): Okay. I'm sorry; that doesn't carry.

So we've gone through a number of amendments to the government motion. We'll now ask, will government motion 14.1 pass, as amended? Is there any further debate on that?

Mr. Toby Barrett: Did you say 14.1? The first one?

The Chair (Mr. Garfield Dunlop): The very first government motion.

Mr. Toby Barrett: It's on page 1?

The Chair (Mr. Garfield Dunlop): Yes.

Mr. Toby Barrett: Okay. Here we are.

The Clerk of the Committee (Mr. Trevor Day): As amended by the various amendments. Now we're on that.

The Chair (Mr. Garfield Dunlop): Any further debate? Those in favour? That's carried.

We'll now go to PC motion 1.5. Mr. MacLaren, are you reading it?

Mr. Jack MacLaren: I don't have any comments.

The Chair (Mr. Garfield Dunlop): No; you have to read it.

Mr. Toby Barrett: You can read it in, if you want.

Mr. Jack MacLaren: Oh, you want me to read it? Okay, sure.

The Chair (Mr. Garfield Dunlop): And I think it's two—it's one page, sorry.

Mr. Jack MacLaren: Okay.

Mr. Toby Barrett: Yes. We're getting a two-for-one here.

The Chair (Mr. Garfield Dunlop): Wait a sec. There are two motions?

Mr. Jack MacLaren: No.

Mr. Toby Barrett: One motion.

The Chair (Mr. Garfield Dunlop): One motion. Okay.

Mr. Jack MacLaren: I move that section 14.1 of the act as set out in section 1 of the bill be struck out and the following substituted:

“Tips and other gratuities

“14.1(1) Subject to subsections (2) and (3), no employer shall take any portion of an employee's tips or other gratuities.

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“Pooled tips and other gratuities

“(2) An employer may take a portion of an employee's tips or other gratuities if,

“(a) the employer regularly performs work for which tips or other gratuities are given; and

“(b) there is an arrangement between the employer and his or her employees to pool tips and other gratuities.

“Facility charges

“(3) An employer at a banquet hall or hotel may take a portion of an employee’s tips or other gratuities for the purpose of redistributing the tip or gratuity if,

“(a) the tip or other gratuity is a facility charge that is automatically included by the employer on a customer’s bill and identified as a facility charge on the bill; and

“(b) there is an arrangement between the employer and his or her employees to redistribute facility charges.”

The Chair (Mr. Garfield Dunlop): Okay. Any questions, or would you like to make a statement on it?

Mr. Jack MacLaren: I have nothing to say.

Mr. Toby Barrett: By way of explanation, we put this forward in the assumption—the reality is there really is no one-size-fits-all. I think of the small restaurants in my area with a kitchen counter with those stools that go around in circles; the cook, everybody is right in front of you, about two feet in front of you—to the large chains, and we’ve heard testimony from people who have worked with a lot of the large chain restaurants. This was put forward in the context or the assumption that these decisions are really best left up to the individual establishment. Decisions should be made by the staff or representatives of the staff—all staff, ideally—and of course, by the owners of the businesses and the managers themselves.

We’ve put this forward, really, in the interest of trying to come up with something that is fair. I kind of indicated that it was, in a sense, two motions for the price of one. There are two issues here: the one part on pooled tips and other gratuities. For “pooled tips” I guess we can say “shared tips”; some people would argue that those are two different things, and I’m still not clear on that. But essentially, managers and owners would have the option—would be allowed—to share in the tip pool if they are a regular participant in the job function, participating in the quality of service that would earn tips.

We heard in testimony, and some written submissions came forward, that they often do the work themselves, and I’m thinking more of the small business owner. The door should be open for them, within reason, to collect tips, to share in tip pooling or to participate in tip sharing, depending on how you define these various words, where it’s appropriate.

I think of Fred’s restaurant. Fred is there. He actually owns it. He works as the host, he cleans up the tables, he sweeps the floor at night, and oftentimes he’s the cook. If he’s got a lunch counter, he cooks it. He makes that milkshake for you, and then he swings around and gives you the milkshake. He owns the place.

I think of a restaurant, I don’t want to name names, but it’s a great dairy restaurant down my way. Joe should be allowed to share in the tips for the work and the quality of service that he provides to Joe’s or Fred’s loyal customers. By the same token, if his wife is serving on tables and pouring the coffee, again, she should receive the tip. Now, I know the one-sentence bill more or less says that. We just want to clarify it in this motion.

Then the second one, the facility charges, these automatic gratuity charges—again, there are different names for this arrangement in the banquet halls, the convention halls. Different people are using different names. It concerns me that if this legislation doesn’t come up with a definition for some of these terms, we might be talking about different things.

But again, these kinds of automatic gratuity charges: They’re put on the bill that a wedding party receives when they’ve had a wedding in a banquet hall or in a hotel and then it can be distributed and/or shared with the house. We don’t really define the house in our amendment, as I recall. But it has to be transparent; it has to be called a facility charge and it’s got to be itemized and clearly identified on the invoice for the people that have rented the place.

These kinds of gratuities are commonly added for these large group halls, but they cover a lot more than a tip; they do cover a lot more than a gratuity. A portion of this, as we know it, goes to the house. I guess we could call it a service charge. But this legislation, Bill 49, very clearly does not address this at all, and we would like to—we feel it would be important to have that included.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Prue?

Mr. Michael Prue: It’s actually questions more than debate. On the first one, pooled tips and other gratuities: Has this not already been dealt with by the committee to your satisfaction in the provisions that the government has put forward? I don’t see anything different that you’re asking here that has not already been passed. If you can tell me how it is in any way different, I would entertain that, but I don’t see it. That’s my first question.

Mr. Toby Barrett: So this would duplicate another amendment, a government amendment?

Mr. Michael Prue: Yes, I think it—

Mr. Bas Balkissoon: It would undo it and weaken it.

Mr. Michael Prue: What has been passed allows already for, in certain circumstances, the tips to be pooled and also to be shared, and those cases where owners or directors can participate. That has already been passed, so I don’t see what yours is doing in any way different.

Mr. Toby Barrett: So legal counsel could confirm that.

Ms. Julia Hood: They’re different. There’s less detail in terms of the rules that are included—

Mr. Toby Barrett: Which one has less detail, sorry?

Ms. Julia Hood: This motion has less detail—

Mr. Toby Barrett: Less detail, yeah.

Ms. Julia Hood: It’s just not as detailed. So it’s not a duplication. I think they’re similar, but they don’t do the same thing.

Mr. Toby Barrett: And then the second part, facility charges: I’m not—

Mr. Michael Prue: Again, if I could ask the question about—it was not included in my original bill or in the government’s amendment. We steered clear of it because it was a contractual agreement signed by—not by the unions or the people who work there, but it’s a contractual agreement between the owner and the customer.

I think the reason I brought it up in many of the debates was to show people that when they thought they were giving money for a tip, it wasn't going for a tip at all; it was going straight into the pocket of the owner to pad the profit. I think the industry has agreed that that's true, because they were here and they said that they wanted to change the name because really what it was was a remedy of pretending to be a tip which people wanted to give to the servers but in fact it wasn't at all; it was a facility charge.

I'm just having a little bit of difficulty saying that they can continue to do a facility charge and take the money from the employees. If they're going to take the money, then they should just take the money; they shouldn't pretend it's a tip. That's what I think, but anyway, if you can convince me otherwise, I'll gladly be persuaded.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Dhillon.

Mr. Vic Dhillon: Just briefly, I want to state our position on this: that we will be voting against this because it weakens what we've already done so far. It undoes a lot of the headway that we've made so far, as I stated in the previous motion, so we'll be voting against this.

The Chair (Mr. Garfield Dunlop): Further debate?

Mr. Toby Barrett: Going back to the question, legal counsel indicated that there was a duplication. Can a very simple amendment be made by deleting 2(a) and (b) and leaving in "facility charges," to delete the duplication?

Ms. Julia Hood: That would get rid of all of the rest of the rules that we've gone through today. All that you'd be left with would be your facility charge rule.

Mr. Toby Barrett: So 3(a) and 3(b).

Ms. Julia Hood: Yes.

Mr. Toby Barrett: Is that appropriate, to verbally just delete 2(a) and 2(b)? Or I can write on this, and then we'd vote on it.

The Clerk of the Committee (Mr. Trevor Day): That would be an amendment to the existing amendments on the floor, striking out—

Ms. Julia Hood: Subsection 2.

The Clerk of the Committee (Mr. Trevor Day): — subsection 2 completely.

Mr. Toby Barrett: Yes. The reason I say that is that I just got the government motions when I came in. I haven't read your motion.

Ms. Julia Hood: Technically, you'd also want to amend subsection 1 because it refers to two subsections and now you're going to be getting rid of one. Do you want to take a short break and just write it up properly?

Mr. Toby Barrett: Yes, with your advice. I think I could do that quickly.

The Chair (Mr. Garfield Dunlop): Can we have a five-minute recess, everyone?

The committee recessed from 1411 to 1416.

The Chair (Mr. Garfield Dunlop): The recess is over. We'll call the meeting back to order. We had an amendment.

Mr. Toby Barrett: Yes.

The Chair (Mr. Garfield Dunlop): Go ahead.

Mr. Toby Barrett: Thank you, Chair; I appreciate the five-minute recess. I did have an opportunity to talk to legal counsel, again referring back to PC motion 1.5 for Bill 49. As we realized in discussion, the first section, titled "Pooled tips and other gratuities," is a duplication. It's not as detailed as the government amendment, but it is a duplication.

Secondly, I did chat with legal counsel about the second part, titled "Facility charges." This is 3(a) and (b). It doesn't duplicate the government amendment, but as I've come to realize, it is in the same spirit of a section of the first government motion—and if I can find the first motion. The government motion on page 1: I'll just check with legal counsel under 14.1(c), is it section (c)?

Ms. Julia Hood: Yes, in the definition of "tip or other gratuity"; we're looking at clause (c). This is towards the bottom of the first page of the motions package.

Mr. Toby Barrett: Could you just explain your interpretation of what the government has written under 14.1(c) and what the opposition is putting forward? I would accept that what the government is putting forward in 14.1(c) is basically what we are trying to have implemented to improve this. Could you explain whether that's accurate or not?

Ms. Julia Hood: Sure; yes, I'd be happy to. Motion 1.5 from the PCs in its subsection (3) deals with facility charges and sets out a rule regarding facility charges. There isn't a parallel provision in the government motion that carried, but I wanted to point out that in the definition of "tip or other gratuity" that's in that motion, clause (c) covers off payments of service charges or similar charges that are imposed by an employer on a customer. That is a sort of similar type of charge where you're looking at an automatic gratuity that's put on a bill. It's not a voluntary payment that's left by a customer, but rather one that's being imposed by the employer on their customer. I think it fairly parallels, at least in spirit, the facility charge that the opposition motion contemplates.

Mr. Toby Barrett: If that's the committee's understanding, if that makes sense, if that covers it off, I would be willing to withdraw the PC motion.

The Chair (Mr. Garfield Dunlop): Motion 1.5?

Mr. Toby Barrett: Yes, 1.5.

The Clerk of the Committee (Mr. Trevor Day): We have a bit of a strange situation here. The mover of the motion, Mr. MacLaren, is no longer a member as of 2 o'clock. In this case, I believe we would require unanimous consent to take this motion off the floor.

Mr. Michael Prue: And I would move unanimous consent.

Interjections: Agreed.

Mr. Michael Prue: Agreed.

The Chair (Mr. Garfield Dunlop): Withdrawn. Thank you very much, Mr. Barrett.

With that, shall section 1—

Interjections.

The Chair (Mr. Garfield Dunlop): Okay, folks.

Mr. Bas Balkissoon: Toby, that's the best thing you did all day.

The Chair (Mr. Garfield Dunlop): I'm finally going to get a vote on a section here.

Interjections.

The Chair (Mr. Garfield Dunlop): Shall section 1, as amended, carry? Carried.

Section 2: We have a government motion. It's number 2. Mr. Dhillon.

Mr. Vic Dhillon: I move that section 2 of the bill be struck out and the following substituted:

“Commencement

“2. This act comes into force on the day that is six months after the day it receives royal assent.”

We believe that's an appropriate amount of time to give business to administer, implement, this law.

The Chair (Mr. Garfield Dunlop): Mr. Balkissoon?

Mr. Bas Balkissoon: Chair, I would add that there are so many associations representing the various industries, like banquet halls, restaurants etc., that six months is adequate to allow them to be aware of this change in legislation and notify their members and let their members become familiar with what we did here and what we'll do in the Legislature later on, and give them enough time to work with their employees to adjust it.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Prue.

Mr. Michael Prue: Thank you very much. As the members of the committee will note, we have a motion that limits that to three months—actually, 90 days, if this one does not pass.

The reason we chose 90 days is that there are literally tens of thousands, if not hundreds of thousands, of people out there who are not getting the tips that are due to them, and they have waited a long time. This is three years that I've been fighting for this bill. I'm hoping it becomes law soon, but they've been waiting for three long years for this to be remedied. In the meantime, since this all started, New Brunswick, Prince Edward Island, Quebec and several jurisdictions in the United States—and Newfoundland—have all passed laws and had it come into effect, and we seem to be lagging behind.

This will not be a surprise to the restaurant industry. They have been informed about this throughout. They've had meetings with me—a little testy at first, mind you, but we've come to some understanding in the latter stages. I know they've had meetings with the government. We would be doing a great service to many of

those hard-working servers if we can start to protect their tips earlier rather than later.

I cannot support six months. If it passes, so be it, but I think three months is sufficient to get the word out.

The Chair (Mr. Garfield Dunlop): Further debate? I'm going to call the question, then, on—

Mr. Todd Smith: Chair, could I just call for a 15-minute recess prior to the vote?

The Chair (Mr. Garfield Dunlop): Prior to the vote, yes. The vote will come immediately when we come back. Okay?

Mr. Todd Smith: Yes.

The Chair (Mr. Garfield Dunlop): Thank you. A 15-minute recess.

The committee recessed from 1423 to 1438.

The Chair (Mr. Garfield Dunlop): Okay, let's call the meeting back to order. We'll call the vote now on NDP motion—

The Clerk of the Committee (Mr. Trevor Day): Government motion.

The Chair (Mr. Garfield Dunlop): I'm sorry, on the government motion number 2. All those in favour of government motion number 2? Those opposed to government motion 2? The motion carries.

The NDP motion—

Mr. Michael Prue: I can't move it, I believe, because we've just passed the motion for six months; I can't pass one for three.

The Chair (Mr. Garfield Dunlop): Okay, so it's withdrawn?

Mr. Michael Prue: Yes, it's redundant.

The Chair (Mr. Garfield Dunlop): Shall section 2, as amended, carry? Carried.

There are no amendments on section 3. Shall section 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 49, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Mr. Todd Smith: Chair, can I call for a motion to adjourn?

The Chair (Mr. Garfield Dunlop): You don't need one; I'm going to adjourn right now.

Mr. Todd Smith: I'd like to adjourn. Can we vote on that?

The Chair (Mr. Garfield Dunlop): This meeting is adjourned.

The committee adjourned at 1439.

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