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**Official Report
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Wednesday 18 November 2009

**Journal
des débats
(Hansard)**

Mercredi 18 novembre 2009

**Standing Committee on
Regulations and Private Bills**

Registered Retirement Savings
Protection Act, 2009

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Loi de 2009 sur la protection
des régimes enregistrés d'épargne
en vue de la retraite

Chair: Michael Prue
Clerk pro tem: Trevor Day

Président : Michael Prue
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 18 November 2009

Mercredi 18 novembre 2009

The committee met at 0901 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Michael Prue): I call the meeting to order. Any preliminary statements before we hear witnesses?

Interjection.

The Chair (Mr. Michael Prue): Oh, excuse me. Yes, the subcommittee. I don't have a cheat sheet in front of me. The subcommittee is first.

Mr. Mike Colle: I'll read the report of the subcommittee.

Your subcommittee met on Tuesday, November 10, 2009, to consider the method of proceeding on Bill 96, An Act respecting protection for registered retirement savings; Bill 106, An Act to provide for safer communities and neighbourhoods; Bill 14, An Act to deem that the Building Code and the Fire Code require fire detectors, interconnected fire alarms and non-combustible fire escapes; and Bill 132, An Act to amend the Liquor Licence Act; and recommends the following:

(1) That the committee meet in Toronto on Wednesday, November 18, 2009, for the purpose of public hearings on Bill 96.

(2) That interested parties who wish to be considered to make an oral presentation on Bill 96 contact the committee clerk by 12 noon on Friday, November 13, 2009.

(3) That the deadline for written submissions to Bill 96 be 9 a.m. on Wednesday, November 18, 2009.

(4) That, for administrative purposes, proposed amendments to Bill 96 be filed with the committee clerk by 11 a.m. on Wednesday, November 18, 2009.

(5) That the committee meet in Toronto on Wednesday, November 25, 2009, for the purpose of public hearings on Bill 106.

(6) That interested parties who wish to be considered to make an oral presentation on Bill 106 contact the committee clerk by 12 noon on Friday, November 20, 2009.

(7) That the deadline for written submissions to Bill 106 be 9 a.m. on Wednesday, November 25, 2009.

(8) That, for administrative purposes, proposed amendments to Bill 106 be filed with the committee clerk by 11 a.m. on Wednesday, November 25, 2009.

(9) That the committee meet in Toronto on Wednesday, December 2, 2009, for the purpose of public hearings on Bill 14.

(10) That interested parties who wish to be considered to make an oral presentation on Bill 14 contact the committee clerk by 12 noon on Friday, November 27, 2009.

(11) That the deadline for written submissions to Bill 14 be 9 a.m. on Wednesday, December 2, 2009.

(12) That, for administrative purposes, proposed amendments to Bill 14 be filed with the committee clerk by 11 a.m. on Wednesday, December 2, 2009.

(13) That the committee meet in Toronto on Wednesday, December 9, 2009, for the purpose of public hearings on Bill 132.

(14) That interested parties who wish to be considered to make an oral presentation on Bill 132 contact the committee clerk by 12 noon on Friday, December 4, 2009.

(15) That the deadline for written submissions to Bill 132 be 9 a.m. on Wednesday, December 9, 2009.

(16) That, for administrative purposes, proposed amendments to Bill 132 be filed with the committee clerk by 11 a.m. on Wednesday, December 9, 2009.

(17) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and Canada NewsWire.

(18) That groups and individuals be offered 10 minutes for their presentation. Any portion of this time not used for presentation may be used for questions from committee members.

(19) That, in the event all witnesses for any bill cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear for that bill.

(20) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on the following business day.

(21) That, in the event the time apportioned to public hearings on any bill is not required, the committee may commence clause-by-clause consideration of the bill during the morning meeting.

(22) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the subcommittee report, Mr. Chairman.

The Chair (Mr. Michael Prue): I'll need a motion to accept. Any discussion? I have never seen discussion on this before. A motion to accept?

Mr. Mike Colle: So moved.

The Chair (Mr. Michael Prue): So moved. All in favour? Opposed? Carried.

REGISTERED RETIREMENT SAVINGS PROTECTION ACT, 2009

LOI DE 2009 SUR LA PROTECTION DES RÉGIMES ENREGISTRÉS D'ÉPARGNE EN VUE DE LA RETRAITE

Consideration of Bill 96, An Act respecting protection for registered retirement savings / Projet de loi 96, Loi visant à protéger les régimes d'épargne-retraite enregistrés.

CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION

The Chair (Mr. Michael Prue): We have a presenter. The first presenter is the Canadian Life and Health Insurance Association: Frank Zinatelli, vice-president, legal services.

For the purposes of Hansard, if the gentlemen could introduce themselves so that when words are spoken, they know who is speaking.

Mr. Frank Zinatelli: Thank you, Chairman. My name is Frank Zinatelli, as I'll state more formally in a second.

Mr. David McKee: David McKee.

The Chair (Mr. Michael Prue): Please proceed.

Mr. Frank Zinatelli: Thank you, Mr Chairman and members of the committee. I would like to thank the committee very much for giving us this opportunity to contribute to your review of Bill 96. My name is Frank Zinatelli and I am vice-president, legal services, and associate general counsel of the Canadian Life and Health Insurance Association. I am accompanied today by my colleague Dave McKee, vice-president and associate general counsel of Sun Life Financial.

We welcome this opportunity to make constructive contributions to the committee as you seek to develop your report to the Legislative Assembly on this important bill. And we would like to congratulate Mr. Leal on his sponsorship of this bill.

With your permission, Chairman, we would like to make a few introductory remarks.

By way of background, the CLHIA represents life and health insurance companies accounting for 99% of the life and health insurance in force across Canada. The industry protects 26 million Canadians and some 20 million people internationally.

The life and health insurance industry is a significant economic and social contributor to Ontario. It protects about 9.9 million Ontario residents and makes \$29.3

billion a year in benefit payments to Ontario residents. In addition, the industry has \$175.4 billion invested in Ontario's economy. A large majority of life and health insurers that carry on business in Canada are licensed to operate in Ontario, and 68 of them have their head offices in the province.

As you may be aware, in the case of life insurance, some limited protections from creditors are already provided under the Insurance Act which allow an insured to plan for the future welfare of his or her family members or other dependants by designating them as a family or irrevocable beneficiary, thus helping to ensure that the payment of guaranteed insurance proceeds, on the insured's death, are free of creditor claims against the insured or her or his estate.

More specifically, there is protection where a beneficiary is designated irrevocably or where a beneficiary designation is in place in favour of a spouse, child, grandchild or parent of the registered plan holder.

Identical provisions exist in every common-law jurisdiction, and very similar provisions exist in Quebec, making for a regime that works effectively to provide protection for policyholders and their families across Canada.

0910

The life and health insurance industry took the position many years ago that creditor protection legislation such as Bill 96 serves a valuable social goal in promoting and protecting retirement savings for Canadians and their dependants, and the industry has been generally supportive of such legislation as it has been introduced in other provinces. That being said, we have been concerned with some of the provincial acts because there are variations between these provincial acts and because of the complexity and sometimes unintended consequences created by these statutes. Ontario's Bill 96 raises a key issue of concern and raises a number of questions as to the ultimate impact that the bill will have on registered products, particularly the millions of policyholders who are already protected to some degree under insurance contracts.

This morning, we would like to focus our remarks on outlining some of the issues that we have identified to date with respect to Bill 96 and suggest how the policy objective of protecting registered plans from creditors can be achieved without reducing the already-existing protections that have existed for decades for life insurance policyholders.

Let's start with section 4 of the bill, which provides that payments out of a registered plan would not be protected from creditors. Think about it: An individual has been saving for years using a registered vehicle, following good financial advice, consistent with what public policy suggests is a laudable goal; that is, saving for retirement. Then, when the individual needs the funds from the registered product, the financial institution starts to make payments. But at that point, creditors have access to those monies and may seize them. It simply does not make logical sense, and yet that is exactly what section 4 provides.

The whole reason for creditor protection is to allow people to save for retirement, and the purpose of saving for retirement is so that you can have an income. Section 4 puts that income at risk by making it subject to any enforcement process by creditors.

You may be wondering why the life and health insurance industry is concerned about this, given that some limited protections, as I indicated earlier, already cover its life insurance and annuity products and given that payments out of such products are not accessible to creditors. Unfortunately, as a result of section 5 of the bill, holders of life insurance annuities could be very much affected, and creditors will insist that payments out would no longer be protected. This is because section 5 of Bill 96 provides that the bill supersedes any other act if there is a conflict. The result is that section 4, in conjunction with section 5, would eliminate creditor protection for annuity payments, which is currently the law in Ontario. Effectively, then, these two provisions would do away with the rationale for providing creditor protection at all: the need for income during retirement. Indeed, as written, the Bill 96 amendments would reduce the existing protections from creditors for over four million individuals in Ontario who now hold annuity products from life insurers, and it would do this to existing products, one could say, retroactively. This clear reduction to rights that the Insurance Act currently provides to Ontario residents is, in our view, extremely inappropriate and inconsistent with the public policy goal of encouraging individuals to save for retirement.

A related issue that needs to be reviewed concerns pension monies that are exempt from execution pursuant to section 66 of the Pension Benefits Act. While there is an exemption in section 2 of the bill, we have received questions from our members that suggest that section 5 of Bill 96 might override the pension legislation exemptions and make the payments accessible to creditors. Consequently, we believe that a more detailed review needs to be done to ensure that such pension monies continue to be protected.

The purpose of the bill, as stated in the explanatory note, is to protect RRSPs, RRIFs and DPSPs from creditors. While this statement of purpose says nothing about reducing current protections that have worked well for decades, this is effectively what is being done. While Bill 96 could be a “win” for savers in that it would allow people to save for their retirement without fear of attacks by creditors, as it now reads, it exposes the benefits of that savings discipline to those same creditors. Again, this is not a logical and appropriate result.

In the case of annuities and perhaps pension statements—because there’s some uncertainty there, in our view—as noted above, one solution would be to amend the Insurance Act and perhaps the Pension Benefits Act to specifically override the impact of Bill 96. Other possible solutions are addressed below.

While the points above are the essential ones that the life and health insurance industry wanted to raise, there are some other matters and questions that we would like to flag for you.

Please note that section 3 of the bill states that the protection provided by the bill, as well as the protections provided by subsections 191(1) and 196(1) of the Insurance Act, would not apply to an enforcement process to satisfy an order made under the Family Law Act or similar legislation in other provinces and territories, or under the Family Responsibility and Support Arrears Enforcement Act, 1996.

The industry generally agrees with the policy intent of this provision, but we query whether this bill, which is not well known, is the right place to move forward to implement this important goal. We suggest that such a provision would best be considered in the context of amendments to the two statutes just referred to. We would also note that we believe the appropriate Insurance Act section reference—the second one—should be to subsection 196(2) of the Insurance Act. Otherwise, it would leave policies with family-member beneficiaries protected from enforcement orders under the Family Law Act, which we do not believe is the intent of the bill as drafted.

In summary, the industry believes that the policy objective of protecting registered plans from creditors can be achieved without reducing existing protections for current holders of insurance registered products. Consistent with our suggestion above that the Insurance Act and perhaps the Pension Benefits Act would need to be amended to specifically override the impact of the proposed Bill 96 provisions, we also suggest as follows:

Provide more time for stakeholders to address these issues, and other more technical questions which we have not raised today, with both the sponsor of this bill, Mr. Jeff Leal, and with the department of finance, which would ultimately be responsible for the legislation once it’s passed.

An essential step forward would be, first, to delete the current section 5 or, secondly, to provide clearly that section 5 does not override the Insurance Act and the Pension Benefits Act.

The first of these two suggestions would be preferred, from our point of view.

The industry greatly appreciates this opportunity to contribute to the committee’s review of Bill 96. Thank you for your attention.

Chairman, we would be happy to answer any questions that you or committee members might have.

The Chair (Mr. Michael Prue): I would do that, except that I believe you’ve actually exhausted the time. Mr. Ruprecht—the time is exhausted. Was it a question you had?

Mr. Tony Ruprecht: Yes, just very quickly. Thanks to—

The Chair (Mr. Michael Prue): No, no.

Mr. Gerry Martiniuk: If you give it to him, you can give it to us.

The Chair (Mr. Michael Prue): No, I can’t do it unless we open it up to everybody. So there is no time for questions.

Mr. Bill Murdoch: Are there any other presenters?

The Chair (Mr. Michael Prue): That's what I have to ask next. Are there any other presenters?

I'd need a motion. The rules are quite clear.

Mr. Gerry Martiniuk: I move two minutes per caucus.

Mr. Bas Balkissoon: I second that.

The Chair (Mr. Michael Prue): We have a motion here to move two minutes per caucus for questions. Okay? All in favour? Opposed, if any? That's carried.

So we will start. Since Mr. Ruprecht asked first, we'll let him go first.

Mr. Tony Ruprecht: Thank you to Mr. Zinatelli and Mr. Leal, whose fingerprints are all over this document.

One question in terms of clarification, Mr. Zinatelli, and that is your reference to subsection 196(2), which is, to my mind, very important. It refers to family members getting their hands on some of this money that has been set aside. Can you give us an example? You were referring to subsection 196(2), which says that it would leave policies with family-member beneficiaries protected from enforcement orders under the Family Law Act—which, as you say, was not the intent. Can you give us one example of that?

Mr. Frank Zinatelli: Maybe I can turn to my colleague, David, on this one.

0920

Mr. David McKee: I think the point simply is that the section reference is just incorrect. The section that protects the family beneficiaries is actually subsection 196(2), not 196(1). The effect of the section here is, first, that subsection 196(2) protects annuity contracts from creditors where the beneficiary is a spouse, child, parent or grandchild of the annuitant. This subsection is taking that protection away where the debt that's being enforced is a debt for support or maintenance.

We're just trying to suggest that from a technical perspective the section reference should be 196(2), not 196(1).

Mr. Tony Ruprecht: I see. So it's in terms of process, basically; right?

Mr. David McKee: Yes.

Mr. Frank Zinatelli: We believe that's what was meant. When you're typing, the 1 and the 2 are pretty close together.

Mr. Tony Ruprecht: Thank you. I appreciate that answer.

The Chair (Mr. Michael Prue): That's the entire two minutes. To Mr. Martiniuk.

Mr. Gerry Martiniuk: Very quickly—and I apologize because I had to step out and I may have missed this—I always thought that registered retirement savings plans had some protection under either the Bankruptcy Act or the Insurance Act.

Mr. Frank Zinatelli: They do indeed, and this is what we're saying. We have these protections under the Insurance Act which are carried over under the Bankruptcy Act by incorporation. What I believe the purpose of this bill is to do is to extend protections to non-insurance RRSPs and other registered products, which we totally

support, but I think there is an unintended effect here which would say that when you're actually getting the money paid to you, then creditors could have access to it. That doesn't happen with insurance products, whereas now we have protection, in my view. I think it's an unintended effect of it.

Mr. Gerry Martiniuk: Okay. Do you have a suggested draft amendment that would cure the problem you see here?

Mr. Frank Zinatelli: Yes. I think you can easily do it by deleting section 5 or by saying in section 5 that it's subject to the Insurance Act and then maybe carry on. Maybe that simple change will alleviate the problems. I'm sure that there are better technical ways of doing that, but wording like that would really be helpful to continue the protection that's in place now for those millions of annuity holders.

Mr. David McKee: Our concern is that the unintended effect of the bill is to take protection away that already exists, and the suggestion that Frank just outlined is to address that.

Mr. Gerry Martiniuk: Thank you.

The Chair (Mr. Michael Prue): That's the two minutes. Mr. Miller.

Mr. Paul Miller: I support your philosophy here. I believe that that section should be removed. Just on a side note, maybe the insurance company could take out insurance to protect their clients. That might be a good idea.

My one concern is about questionable conduct: when people buy insurance policies to avoid debt and also for other unscrupulous things. What is in this bill to protect family members or other people from manoeuvres by people to use the Insurance Act to better their situation when they've done something illegal? What is in there to do that?

Mr. David McKee: Certainly family members are protected by subsection 3(2), which allows maintenance debts to still be enforced. More generally in terms of people trying to avoid their creditors, the fraudulent conveyance legislation would be used and has been used in the courts to address those kinds of transactions.

Mr. Paul Miller: You mean like for Bernie Madoff and people like that?

Mr. David McKee: Fraudulent conveyance is, if someone transfers property to avoid their creditors, the Fraudulent Conveyances Act can be brought to bear to say that that transfer is void.

Mr. Paul Miller: My point, quickly, is that I think there should be an amendment to toughen up that area because I don't feel there's enough in either the bankruptcy or insolvency acts or the Insurance Act. I really feel it has weak areas, vulnerable technicalities that have to be filled, and hopefully we could move in that direction also.

The Chair (Mr. Michael Prue): Thank you, Mr. Miller. That's your two minutes as well.

Mr. Frank Zinatelli: Thank you, Chairman and members of the committee.

Mr. David McKee: Thank you.

The Chair (Mr. Michael Prue): I did ask, but I'm going to ask one more time: Is there anybody else who wishes to speak to the bill? We don't have any other listed deputants.

Seeing none, are there any comments, questions or amendments to any section of the bill? Are people wanting to make amendments to the bill? If so, we can take a short recess in order to allow those to be written out.

Mr. Jeff Leal: Thanks, Chair; that would be fine. We are working on an amendment right now.

The Chair (Mr. Michael Prue): How long shall we take? Ten minutes?

Mr. Mike Colle: I move 10 minutes.

The Chair (Mr. Michael Prue): We have a motion for a 10-minute recess. All those in favour? Opposed? That's carried. We'll see everybody back in 10 minutes.

The committee recessed from 0925 to 0935.

The Chair (Mr. Michael Prue): We'll call the meeting back to order. I understand that all of the amendments have now been circulated by the clerk. We'll go through the bill clause by clause.

There are no amendments to section 1. Shall section 1 carry? Carried.

There are no amendments to section 2. Shall section 2 carry? Carried.

Section 3: We have two amendments to section 3. The first one is 0.1, and I believe these are all being moved by Mr. Leal.

Mr. Jeff Leal: I move that subsection 3(2) of the bill be amended by striking out "and subsections 191(1) and 196(1) of the Insurance Act" in the portion before clause (a).

The Chair (Mr. Michael Prue): Any discussion on that?

Mr. Gerry Martiniuk: What does that do to the bill? Could you explain it to us?

The Chair (Mr. Michael Prue): Mr. Leal, the question here is: What does that do? What does that accomplish?

Mr. Leal is pointing to legislative counsel.

Ms. Laura Hopkins: This amendment removes the reference to the Insurance Act in this subsection. This subsection is the subsection that makes it possible to collect family law orders against the registered plans. The removal of the reference to the Insurance Act removes those kinds of plans from the possibility of family law collections being executed against them.

Mr. Paul Miller: Wait a minute. You're telling me that this is removing the ability of a mother to get coverage for her children from a man's insurance policy, for example? Is that what that's saying?

Ms. Laura Hopkins: I believe that the effect of this is to make the rules under the Insurance Act apply rather than the rules under this act apply. And—

Mr. Paul Miller: Sorry to interrupt, but my question would be: Would this in any way prohibit a mother or father from getting access to money that's owed to them for the benefit of the children? Would this inhibit that or

would it help them by moving it to another section? I want to know if this is positive or negative, in your opinion, for those people.

Ms. Laura Hopkins: I'm not familiar with the rules under the Insurance Act, and those would be the rules that apply. It may be that the presenters have greater expertise in this area than I do. I'm sorry; I'm not able to help with that.

Mr. Paul Miller: With all due respect, if that's the case, and there's not an explanation that's suitable, I would not support that because the children come first and they should have access to whatever money is available to help them. So I'm having a problem with this one. If they can rectify that for me—

Mr. Bas Balkissoon: It's covered under the Insurance Act.

Mr. Paul Miller: I want an explanation on this.

The Chair (Mr. Michael Prue): We have time, so let's take our time and do it right. This is very fast, to put a bill through in one day.

Mr. Paul Miller: Yes.

The Chair (Mr. Michael Prue): So let's make sure that everybody's satisfied, or members can vote it down.

Mr. Paul Miller: And can I have this explanation recorded, please?

The Chair (Mr. Michael Prue): Absolutely. The lawyer is getting an explanation and will come back and explain what the purport of this motion is.

Mr. Paul Miller: I'd like a recorded vote on this too.

The Chair (Mr. Michael Prue): Yes.

Mr. Paul Miller: And I want the explanation on the record. This could be critical to—

Mr. Jeff Leal: Mr. Miller, I think we have an explanation for you, sir. I just want the legal counsel to provide it for you, and we can get it in the record.

Ms. Laura Hopkins: I understand from the presenters that the Insurance Act currently doesn't make it possible for family law collections to be executed against these kinds of registered plans. So this would result in full protection of these registered plans if they're governed by the Insurance Act.

Mr. Paul Miller: All right, thank you. I will not be supporting that.

Mr. Gerry Martiniuk: I thought that the exemption for the Family Law Act was appropriate. We especially have great difficulty collecting from persons who aren't employed. I remember sitting on the justice committee. We had a lawyer whose girlfriend drove a rather fancy car and they lived in a fancy home, and he wasn't paying support for his six children simply because there was nothing to garnish. That leads to a great deal of difficulty, and I'd like to be on the record that I think our party is in favour of ever-widening rights for the protection of children in family law matters. I cannot support the proposition as put forth. I think that is a backward step from this bill.

0940

The Chair (Mr. Michael Prue): Any other speeches to this?

Mr. Bill Murdoch: I was going to say: Is that what you want? I don't think it's what Mr. Leal wanted, anyway. We want to get it right, so I don't think it's whether we agree or disagree. I think we want to get it right before we do it, so I'd like Jeff—what do you say?

Mr. Jeff Leal: Mr. Chair, we obviously want to get it right, so would it be appropriate to come back after 12—if we could take some time this morning to get it right?

Mr. Paul Miller: I have no problem. I believe Mr. Leal wants to do this right, and I think that this is a very critical part that someone may have overlooked that may have a negative impact on single mothers in this province, and fathers as well. So I think we have to be very careful what we're doing here. I would give him all the time he wants to get it right, so I agree.

The Chair (Mr. Michael Prue): All right. What we'll do, then, is we'll hold down this and move on, if that's okay with others.

Mr. Gerry Martiniuk: I move that we adjourn until 12.

The Chair (Mr. Michael Prue): For all of it, or—

Mr. Paul Miller: There's one more clause.

The Chair (Mr. Michael Prue): Oh, no, there's two—

Mr. Gerry Martiniuk: No, let's carry on at that time.

Mr. Jeff Leal: There are two more amendments that we can deal with, and we can come back and deal with them.

The Chair (Mr. Michael Prue): The only thing left to deal with will be this one. So it won't take very long at 12, okay?

Mr. Gerry Martiniuk: Okay.

The Chair (Mr. Michael Prue): All right.

We're standing down amendment 0.1. The next amendment being proposed by Mr. Leal is number 1.

Mr. Jeff Leal: I move that subsection 3(2) of the bill be amended by striking out "or" at the end of clause (a) and by adding the following clauses:

"(c) to satisfy an order made under the Interjurisdictional Support Orders Act, 2002; or

"(d) otherwise to recover support or arrears of support."

Mr. Paul Miller: I think this falls under the same umbrella. I will not support that the way it is. That has to be corrected. So if you want to take time to investigate that one—I think they're connected interprovincially. Would that be correct?

Ms. Laura Hopkins: The effect of this amendment would be to ensure that family law collection matters that are enforceable under the Interjurisdictional Support Orders Act can be executed against—

Mr. Paul Miller: Insurance?

Ms. Laura Hopkins: Yes.

Mr. Jeff Leal: This effectively, Mr. Miller, strengthens the bill for collections.

Mr. Paul Miller: Okay. All right.

Mr. Jeff Leal: It's something that you have articulated well.

Mr. Paul Miller: Yes, thank you. I have no problem with that if it strengthens the position.

Mr. Jeff Leal: Mr. Miller, this is a common section that's in the other provinces that have this: British Columbia, Alberta, Saskatchewan, Prince Edward Island, and Newfoundland and Labrador, and the latest province to introduce this type of legislation was former Premier Doer in Manitoba. That's the last—

Mr. Paul Miller: Nova Scotia and New Brunswick don't have it.

Mr. Jeff Leal: As of yet, but it's gradually moving across the country.

Mr. Paul Miller: Good. Thank you.

The Chair (Mr. Michael Prue): Okay. So you've heard that—

Mr. Gerry Martiniuk: Question.

The Chair (Mr. Michael Prue): I'm calling the question.

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

The next motion, I have been advised—

Interjection.

The Chair (Mr. Michael Prue): Yes. The next motion that Mr. Leal was to make is on section 5. It is tied into the first motion.

Mr. Jeff Leal: That is correct.

The Chair (Mr. Michael Prue): Therefore, we're going to hold that down as well.

Mr. Jeff Leal: I appreciate that.

The Chair (Mr. Michael Prue): Okay. So now what we're going to do is we're going to deal with the other sections.

Shall section 4 carry? Carried.

Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall the title carry? Carried.

All right. We will leave three items for this afternoon, those being section 3, section 5 and whether or not to proceed the bill to the House. That should not take too long, hopefully, if everyone can be here promptly at 12.

Mr. Paul Miller: Mr. Chair, who's going to draft the amendments to this?

Ms. Laura Hopkins: I am.

Mr. Paul Miller: You'll draft them, and Mr. Leal will—

The Chair (Mr. Michael Prue): I think it will be Mr. Leal, and we'll have a full explanation on what they mean.

This meeting is recessed until 12 o'clock. Please be prompt. I know that people want to go to lunch and other things, so we don't want to take any more time than necessary at 12.

The committee recessed from 0945 to 1200.

The Chair (Mr. Michael Prue): Meeting resumed. We have, I understand, now three motions as opposed to the two that we left here with. There's three.

Mr. Jeff Leal: That's correct.

The Chair (Mr. Michael Prue): All right. Just to make sure everybody has the correct motions, they are

labelled 0.1R, 1.1 and 1.2, so just to make sure everybody has those three. I understand, Mr. Leal, you will be moving all three?

Mr. Jeff Leal: I will be.

The Chair (Mr. Michael Prue): The floor is yours.

Mr. Jeff Leal: I move that subsection 3(2) of the bill be amended by striking out “and 196(1)” and substituting “and 196(2)” in the portion before clause (a).

This motion corrects an error in cross-reference. Subsection 196(2) of the Insurance Act provides that certain insurance contracts are exempt from seizure. This amendment will override that exemption in connection with the enforcement of family law orders. So that corrects that deficiency.

The Chair (Mr. Michael Prue): Any discussion?

Mr. Gerry Martiniuk: I would ask for a 20-minute adjournment to confer with my colleague before the vote—and that will happen on every vote.

The Chair (Mr. Michael Prue): Okay, but—

Mr. Gerry Martiniuk: I just want to tell them in advance.

The Chair (Mr. Michael Prue): Well, you can say that, and you’ll have that opportunity when I put the question.

Mr. Gerry Martiniuk: I was just being courteous to my colleagues across the hall.

The Chair (Mr. Michael Prue): I know, okay. Is there any other discussion? Then I’m going to put the question. So you are asking for a 20-minute recess.

Mr. Gerry Martiniuk: Yes.

Mr. Mike Colle: Is he going to supply lunch when he does this? Is that part of the motion?

The Chair (Mr. Michael Prue): I don’t know. But anyway, we have a motion for a 20-minute recess.

Interjection.

The Chair (Mr. Michael Prue): I am advised that it is automatic. So we are now recessed for 20 minutes.

The committee recessed from 1203 to 1223.

The Chair (Mr. Michael Prue): It’s 12:23 according to this clock; away we go. I trust everyone has had a good caucus.

We now have a vote. Mr. Leal has moved motion 0.1R. There’s no other discussion. All those in favour?

Mr. Paul Miller: Do we get an explanation on it?

The Chair (Mr. Michael Prue): It was had. It is strengthening the ability—

Mr. Paul Miller: Strengthening the ability, okay.

The Chair (Mr. Michael Prue): All those in favour? Opposed? That carries.

Mr. Leal, might I suggest that 0.1 be removed? That was the first, so it will require a motion.

Mr. Jeff Leal: I will move that, Mr. Chair.

The Chair (Mr. Michael Prue): Just withdrawn?

Mr. Jeff Leal: Just withdrawn, yes.

Interjection.

The Chair (Mr. Michael Prue): Shall section 3, as amended, carry?

Mr. Bill Murdoch: What are we doing?

The Chair (Mr. Michael Prue): We’ve just finished this. This was amending section 3, and now I have to deal with those sections as we finish them before going on to section 4.

The next two deal with section 4.

Mr. Bill Murdoch: We’ve done section 4.

The Chair (Mr. Michael Prue): It’s just that it’s going to have to be reopened.

What I’m doing now is, shall section 3, as amended, carry? Carried.

Now we have a new motion.

Mr. Gerry Martiniuk: There hasn’t been any time for discussion. There’s only been a movement and no recognition for discussion in regard to the motion.

Mr. Paul Miller: Or the changes to it.

The Chair (Mr. Michael Prue): I’ve been around here only eight years and if somebody would tell me if I’m wrong, but customarily we deal with the sections and then we have to say, “Shall this section carry?” I have never seen one debated, ever, because you either vote for the section or not. The debate over the motion and the debate over the amendments has already taken place. So it’s only whether you want to vote for the section or not vote for the section.

Mr. Gerry Martiniuk: Okay. I need 20 minutes to consider that.

Mr. Bill Murdoch: Is it a motion or not?

The Chair (Mr. Michael Prue): I don’t believe that’s a motion; it’s simply just confirming the section.

If you want 20 minutes, you can have 20 minutes for the next one.

Mr. Gerry Martiniuk: No. If it’s not a motion, then we shouldn’t be voting on it.

The Chair (Mr. Michael Prue): Are you seeking 20 minutes to discuss whether section 3 should carry?

Mr. Gerry Martiniuk: Yes.

The Chair (Mr. Michael Prue): We’re recessed for 20 minutes until quarter to the hour.

The committee recessed from 1226 to 1246.

The Chair (Mr. Michael Prue): Twenty minutes is now over. I trust the consultation went successfully.

We now have a motion before us. Shall section 3, as amended, carry? All those in favour? Opposed? That carries.

Mr. Leal, I believe you have another amendment.

Mr. Jeff Leal: Thank you very much, Mr. Chair. I know this will be a difficult request. I would move that we unanimously withdraw section 4 so that a—

The Clerk of the Committee (Mr. Trevor Day): Unanimous consent.

The Chair (Mr. Michael Prue): Unanimous consent—

Mr. Jeff Leal: Oh, I need unanimous consent to withdraw section 4?

The Chair (Mr. Michael Prue): —so that it can be reopened.

Mr. Jeff Leal: So it can be reopened with a new amendment?

The Chair (Mr. Michael Prue): To be clear on the record, Mr. Leal is seeking unanimous consent to reopen section 4, which we dealt with earlier.

Mr. Gerry Martiniuk: No.

The Chair (Mr. Michael Prue): I have a no. Mr. Leal, you have further amendments.

Mr. Jeff Leal: Since I don't have unanimous consent, Mr. Chair, I have a new motion that's just being walked in right now.

The Chair (Mr. Michael Prue): All right.

Mr. Jeff Leal: It deals, Mr. Chair, with issues raised this morning. I have provided some commentary with the intent for all members of the committee.

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

“Status of payments

“4.1(1) Subsections 7(2), (3), (4) and (5) of the Wages Act apply with respect to payments out of a registered plan as if the payments were wages.

“Exception, Insurance Act

“(2) Subsection 4(1) does not apply with respect to payments out of registered plans to which the Insurance Act applies.”

The Chair (Mr. Michael Prue): And by way of explanation?

Ms. Laura Hopkins: My penmanship isn't what we might wish.

The first subsection reads, “Subsections 7(2), (3), (4)”—

The Chair (Mr. Michael Prue): Yes. I believe that's what was said.

Mr. Jeff Leal: That's what I said.

Ms. Laura Hopkins: Okay. My mistake.

The Chair (Mr. Michael Prue): And by way of explanation?

Mr. Jeff Leal: Mr. Chair, I'd be pleased to provide it.

This amended section deals with payments out of registered plans governed by the bill. The effect of this section is that payments on registered plans can be seized to pay debts. The amendment maintains the current state of law of payments out of registered plans that are governed by the Insurance Act. Currently, payments out of these plans cannot be seized to pay debts.

The second part of the motion: The Wages Act specifies that a certain percentage of a person's wages are exempt from seizure. The percentage in most cases is 80%. However, if the wages are being garnished to pay support or maintenance, the percentage is reduced to 50%. Courts can change these percentages in particular cases.

So that sums up the intent of the new section.

The Chair (Mr. Michael Prue): Is there any discussion? Mr. Miller.

Mr. Paul Miller: It's sending me conflicting messages here. Subsection 4(4), I believe, you changed, which I like.

The Wages Act specifies that a certain percentage of a person's wages are exempt from seizure. The percentage in most cases is 80%. However, in the case of support

payments, it goes to 50%. That's what I like, but I'm a little concerned about the exception in the Insurance Act. That's exactly what I was talking about earlier, and you're exempting them again by saying that subsection 4(1) does not apply with respect to payments under the registered plans to which the Insurance Act applies. So I'm afraid that you have countered it with a negative. I don't know what somebody's doing here, but your subsection 4.1(2) is countermanding 4(4). So I think you're going to want to remove exception to the Insurance Act completely because we're just spinning our wheels here. This is contradictory. Correct me if I'm wrong.

The Chair (Mr. Michael Prue): Mr. Leal.

Mr. Jeff Leal: I'd like to ask legislative counsel.

Ms. Laura Hopkins: The first subsection of the motion protects a certain portion of the payments out of a registered plan from garnishment in the same way that wages are protected. The second amendment preserves the current status of payments out of plans that are governed by the Insurance Act, and those plans are fully protected.

Mr. Paul Miller: I beg to differ. You're saying in this section that there's no change to the present insurance plans. But right now people—mothers—who require support payments have trouble getting money out of insurance plans. You're doing exactly what I didn't want here, and you're correcting it with 4(4), which I'm happy with, but 4.1(2) countermands 4(4), so it's double talk. Either you eliminate 4.1(2) and go with 4(4), which I won't have a problem with—but you're just doing exactly what they want. This is not what we're looking for here. Am I wrong?

Mr. Jeff Leal: I'd be prepared to withdraw the section that deals with the Insurance Act and stay with the section dealing with the Wages Act.

Mr. Paul Miller: So 4(4) would remain. So “Exception, Insurance Act,” subsection 4.1(2) would be removed?

Mr. Jeff Leal: Exactly.

The Chair (Mr. Michael Prue): Are you withdrawing that section?

Mr. Jeff Leal: I am, Mr. Chair.

The Clerk pro tem (Mr. Trevor Day): So it's being amended by removing subsection (2).

The Chair (Mr. Michael Prue): Yes. Usually you withdraw a whole section. Can you withdraw parts?

Interjection.

The Chair (Mr. Michael Prue): He's amending it by withdrawing subsection (2).

Mr. Bas Balkissoon: We're just removing the exception.

Mr. Jeff Leal: That's correct, Mr. Chair.

The Chair (Mr. Michael Prue): Any further discussion? Seeing no further discussion—

Mr. Gerry Martiniuk: I would like a 20-minute recess prior to the vote in regard to this matter, Mr. Chairman. I should explain that both my colleague and myself commend Mr. Leal for bringing this forth. We

agree with the merits of it, but because of the McGuinty government's refusal to commit to province-wide public hearings on the single largest sales tax grab in Ontario history, we are taking these delays as we are entitled to. I therefore ask for a 20-minute recess in regard to this vote.

The Chair (Mr. Michael Prue): Okay, the 20-minute recess is automatic. Given the time—it now being eight minutes before the hour—and given the instructions from the Legislature that we have only until 1 o'clock today to deal with this matter, we'll adjourn today and we will return on our next date, which will be for Bill 106, on Wednesday, November 25, 2009.

Just for clarification, Bill 106 is An Act to provide for safer communities and neighbourhoods, put forward by Mr. Naqvi. That's the bill. So we will not be coming back to this bill on the next occasion unless there is a subsequent subcommittee or whatever is done in order to get it back on track.

Mr. Paul Miller: Mr. Chair, would it be possible—Mr. Leal did some pretty good work there. Could we possibly have a copy of his new suggestion with the removal of subsection (2)—

Mr. Jeff Leal: We'll get it to you.

Mr. Paul Miller: —so that I can have a document to refer to when we once again meet on this bill.

The Chair (Mr. Michael Prue): I'm sure that Mr. Leal will provide the necessary copies when and if this—

Mr. Jeff Leal: As quickly as we can, and we'll certainly provide Mr. Martiniuk and Mr. Murdoch with similar information.

The Chair (Mr. Michael Prue): I'm sure this will be done through the clerks' department, but the question remains, when and if it is heard again, as it may not be.

That being the business for today, the meeting is adjourned.

The committee adjourned at 1255.

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