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Wednesday 1 December 2010

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Mercredi 1^{er} décembre 2010

**Standing Committee on
Justice Policy**

Ticket Speculation
Amendment Act, 2010

**Comité permanent
de la justice**

Loi de 2010 modifiant la Loi
sur le trafic des billets
de spectacle

Chair: Lorenzo Berardinetti
Clerk: Trevor Day

Président : Lorenzo Berardinetti
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 1 December 2010

Mercredi 1^{er} décembre 2010

The committee met at 1305 in committee room 1.

TICKET SPECULATION
AMENDMENT ACT, 2010
LOI DE 2010 MODIFIANT LA LOI
SUR LE TRAFIC DES BILLETS
DE SPECTACLE

Consideration of Bill 172, An Act to amend the Ticket Speculation Act / Projet de loi 172, Loi modifiant la Loi sur le trafic des billets de spectacle.

The Chair (Mr. Lorenzo Berardinetti): Okay, we'll call the meeting to order. This is the Standing Committee on Justice Policy. On the agenda here is to do clause-by-clause consideration.

We'll start with section 1. Are there any amendments? No? Okay, any debate on section 1?

Shall section 1 carry? All those in favour? Opposed? Carried.

Section 2: Mr. Zimmer.

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

"2. The act is amended by adding the following section:

""Prohibition, primary seller

""2.1(1) No primary seller shall make a ticket available for sale for admission to an event in Ontario if a ticket for admission to the same event is or has been made available for sale by a secondary seller who is related to the primary seller.

""Prohibition, secondary seller

""(2) No secondary seller shall make a ticket available for sale for admission to an event in Ontario if a ticket for admission to the same event is or has been made available for sale by a primary seller who is related to the secondary seller.

""Related

""(3) For the purposes of subsections (1) and (2), a primary seller and a secondary seller are related if a relationship between them, whether corporate, contractual or other, results, directly or indirectly, in an incentive for the primary seller to withhold tickets for sale by the primary seller so that they can be sold by, through or with the assistance of the secondary seller instead.

""Offence

""(4) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to,

""(a) if the person is an individual, a fine of not more than \$5,000; and

""(b) if the person is a corporation, a fine of not more than \$50,000.""

The Chair (Mr. Lorenzo Berardinetti): Any debate? Mr. Chudleigh.

Mr. Ted Chudleigh: I would like to ask a question as to how the word "incentive" is being defined. It seems like it's a very broad term and somewhat vague in its use in (3), "Related." I wonder if the government or perhaps legal counsel could make comment as to how that word is being interpreted.

Mr. David Zimmer: I have with me one of the senior and ranking lawyers in the ministry, who will shed light on your question.

The Chair (Mr. Lorenzo Berardinetti): Please just identify yourself.

Mr. John Gregory: My name is John Gregory. I'm general counsel with the Ministry of the Attorney General.

There is no intention that "incentive" should have any meaning other than its dictionary meaning, which I think means that Mr. Chudleigh is essentially right—that it's pretty broad.

Any kind of incentive, normally, would be financial: if we're talking about the sale of goods, how the primary seller would profit from the secondary seller. Whether there's a contract that says, "We'll give you a cut of sales," or there is a corporate relationship where it all flows into the same purse or whatever—anything that can say, "It would be to my economic advantage not to sell these things at their face value, but to get them over to someone who will sell them for more."

There's not a specific statutory meaning. It's not defined in the statute.

Mr. Ted Chudleigh: So, just for the record, it has no influence on tickets that are being given out for promotional purposes? As I'm sure the committee realizes, a significant percentage of any concert tickets, maybe 25% and higher in some cases, would be given out to radio stations, newspapers and magazines for the purpose of advertising the event coming up. Every morning on radio stations, you get contests where free tickets to concerts are given away. These are promotional tickets. Quite often, they amount to 25%, 30% of the tickets that are available in that venue. In no way would those tickets be

considered to be withheld, or considered to be an “incentive,” the term that is being used in this amendment.

Mr. John Gregory: I would think, normally, not. The question is, is there an incentive to put them into promotion instead of selling them? Are you going to get something from some related seller? Are you going to get cash coming back to you? I would have thought not. If I win a ticket on the radio and say, “I don’t want to go to that. I’m going to sell it off on eBay and make money,” that’s fine for me—subject to violating the other section of the act—but it doesn’t put money back in the hands of the promoter. So there wouldn’t be an incentive for the promoter to do it because they were profiting from the secondary sale.

I think the short answer is yes, but that’s why.

Mr. Ted Chudleigh: That’s what I wanted on the record.

The other term that’s being used a little later in that same sentence is “withhold.” It is the incentive to withhold, not the act of withholding, which is at issue. Would you comment on that?

Mr. John Gregory: You’re right. That’s because subsection (3) is essentially a definition of “relationship” and what is related. So the question is not, “You are related because of what you have done,” but “You are related because the relationship is such that it would be of interest to you to behave in a certain way”; in this case, to withhold tickets in order to sell them somewhere else through another channel—a secondary seller—because it will be more lucrative to you than to have them sold in the primary market in the usual way. It’s an operational definition rather than a factual definition, if I can put it that way.

The Chair (Mr. Lorenzo Berardinetti): Further debate? Mr. Kormos.

1310

Mr. Peter Kormos: Let’s parse this, perhaps. Subsection (1) is not changed by the amendment, subsection (2) is not changed by the amendment, so we’re only talking about subsection (3). I’m trying to follow along. “For the purposes of subsections (1) and (2), a primary seller and a secondary seller may be related” as compared to “are related.”—that’s interesting—“if a relationship between them, whether corporate”—and that’s a clear relationship. But then you go on to contractual. In the existing bill: “by means of an arrangement between them.” That’s contractual, right? In the original bill, you’re saying basically a contract, an agreement.

Mr. John Gregory: That’s right, without wanting to—

Mr. Peter Kormos: So far we’re not changing anything. So “corporate, contractual or other,” what could that possibly be? I know that’s a great word, I suspect, from a drafting point of view, because it contemplates things that maybe aren’t conceivable yet or don’t exist. Seriously, what sorts of things are you contemplating? It’s either going to be corporate or contractual. What other kind of relationship could you possibly—what’s the “other” intended to cover? Or is it just there just because?

Mr. John Gregory: Mr. Chair, if I may answer that, the idea of “contractual or other” is to cover, as Mr. Kormos points out, the word “arrangement” in the original text of the bill, as it was written in the House. There could be a number of other legal relationships. There could be a partnership which would not be a corporate relationship but could be an arrangement where you have some kind of business partnership where one of the partners sells in the primary market and one of the partners sells in the secondary market, but they pool their profits, which is why, of course, if the secondary seller can sell for more you might well have an incentive for the primary partner to pass the tickets on and not sell them.

“Other” definitely is intended to be a bit of a basket clause for the arrangements we haven’t thought of, but “arrangement” is similarly broad. An arrangement is probably contractual but there might be something else; there might be some kind of joint venture. We don’t know the relationship.

If you look at professional baseball, for example, there’s Major League Baseball, there’s the team and then there’s Major League Baseball/Entertainment—there’s a long corporate name for it—which has certain relationships with certain ticket sellers. It’s not corporate. Where are the contracts, where is the relationship? It’s a combination of relationships, and we want to cast a blanket, but we want to cast a blanket only if the operational effect is to give an incentive to do—

Mr. Peter Kormos: Which is the next part of the amendment. “Other” is an abundance of caution.

Mr. John Gregory: That’s right.

Mr. Peter Kormos: I suspected that. I just wanted to be clear.

“Results, directly or indirectly, in an incentive” implies profit, but not necessarily monetary profit; it could be other incentives. It implies a gain for the primary seller, an incentive for the primary seller to withhold tickets for sale by the primary seller so that they can be sold.

It’s a problem. “An incentive for the primary seller to withhold tickets”—tickets that are to be sold, so they can be sold through—so it’s the primary seller that has to have the incentive?

Mr. John Gregory: That’s right. The problem that the bill is intended to fix—if I can stick to the technical rather than getting into the policy. The idea was that I can’t get tickets for concert X or sports event Y despite the fact that I’m on the phone or I’m online within five seconds of them going on sale because there aren’t any left. But look, I get an offer to go to a secondary seller where there are lots of them at a much higher price. Why is that happening?

The idea of the bill is to say that we do not want a situation where the primary seller has incentive not to put a full array on sale at the face value for the primary sale because there’s more money to be had or some other incentive—I take your point; it wouldn’t have to be money if there was prestige in the secondary seller, but for most corporate and commercial matters, it’s monetary.

So we want to say no, don't create a structure that creates that incentive.

Now, if tickets are withheld for other purposes, as Mr. Chudleigh said, for promotional purposes or for doing favours for the artists or whatever, well, that's a different question. There's nothing the primary seller can do about that. The primary seller should not be in a position of having an automatic, built-in conflict of interest.

Mr. Peter Kormos: Okay. And does this correct the problem that you have with a secondary seller being a mere broker? "Secondary seller" means a person who is engaged in the business of making available for sale tickets that have been acquired in any manner and by any person from or through a primary seller."

You see, we had the Ottawa Senators here, and TicketsNow was very peculiar about the stuff they explained at the hearing. It was straightforward, but it was peculiar at the same time because they suggested—as a matter of fact, they denied there being any relationship in terms of who sells tickets to TicketsNow and Ticketmaster.

The implication from the get-go is that TicketsNow was given priority access to tickets from Ticketmaster. In fact, the \$300,000 settlement in New Jersey suggests that that was the case because if it were a mere computer glitch—one can't conceive of how a computer glitch could do that, first of all, but secondly, why would there have been a settlement?

Is the ticket resale site of the Senators—which they say is not scalping because a ticket holder isn't allowed to sell a ticket for higher than face value. That seems to be a pretty good thing; I think we all thought that was a good thing because they're not scalping. But does this address, then, the concern that the secondary seller by definition would include, similarly, a website that acts as a broker or a bourse for ticket holders to sell their tickets?

Do you understand what I'm saying?

Mr. John Gregory: Yes. Well, certainly, the definition of secondary seller which is in section 1 talks about making available tickets so that we don't fix what their business model is. If their business model is that I buy tickets and resell them, like the few people outside the Air Canada Centre, or whether it's online and you're just an intermediary or a flow-through doesn't matter. The point is, if that operation is a money-making operation, and if it makes enough money that your related business would rather have it sold that way than on the primary market, then you're going to be caught by this.

Mr. Peter Kormos: Fair enough.

Mr. John Gregory: It's a flexible business model.

Mr. Peter Kormos: But I'm reading it, and it may be addressed by your amendment in subsection (3) here, "Secondary seller" means a person—or corporation—"who is engaged in the business of making available for sale"—not selling, but making available for sale—"tickets that have been acquired in any manner and by any person." It seems to me that if the Senators—what was the name of their secondary website?

Mr. John Gregory: CapitalTickets.

Mr. Peter Kormos: So if I have a Senators ticket and I want to put it out for sale, and I give it to this CapitalTickets, even though it's at face value—nonetheless, CapitalTickets is a person who is making available for sale my ticket that has been acquired in any manner and by any person—to wit, me—not necessarily by CapitalTickets.

Mr. John Gregory: That's right. It's not my position at this point to be giving legal opinions, but as a popular reading, I think CapitalTickets is a secondary seller as defined here. One of the purposes of the amendment is to say let's not look just at whether or not there is a contract or a corporate relationship between party A and party B, but is there one that has operational consequences?

I don't want to speculate for the committee; this is supposed to be a technical response. But if the Ottawa Senators see tickets being sold by CapitalTickets at face value, then there's no incentive for them to say, "Well, let's send all the tickets to CapitalTickets," where they get some percentage of CapitalTickets' commission. They'd rather get the full face value in selling it over the counter for \$80 a ticket rather than getting \$5 on CapitalTickets' commission, or whatever the commission happens to be. There is not an operational incentive, so it's not just the structure.

1320

Before, with the bill without the amendment, there could be an issue between the Senators and Capital Tickets. With the amendment and the operational element, there should not be.

Mr. Peter Kormos: Okay, that's fair, and I'm glad we got that explanation—which makes this a reasonably fine amendment, doesn't it, Mr. Zimmer?

Mr. David Zimmer: Well, just to add to that, my short thought on the matter is that the amendment makes the definition of the relationship functional—that is, what effect it is likely to have—rather than structural, where you're just looking at the technical, legal links between the bodies. What the change does is it reduces the chance of having the ban apply where no harm is intended. So we're after the functional relationship rather than a mere technical relationship, as Mr. Gregory said, of a contractual link between the two of them. Are they—ah, enough said.

Mr. Peter Kormos: Perhaps to you, sir: One of the things that we heard about over the course of the debate and the modest committee hearings, through no fault of anybody other than the fact that only two parties wanted to appear in the whole world, was that there is a computer system or a computer program that allows a scalper to access websites and scoop up big volumes of tickets. I wish somebody was here with that technical expertise, because I don't understand how that happens without collusion. How does that buyer know to plug into that purchasing program? I have no idea.

Since there's a relationship required—well, there is collusion required in your amendment, is that right?

Mr. John Gregory: Well, a relationship is not an accidental relationship; it's an intentional relationship.

Mr. Peter Kormos: Yeah. So this is the collusion amendment. Thank you.

I have more to say about the bill itself, but I appreciate the assistance.

The Chair (Mr. Lorenzo Berardinetti): Thank you. Any further debate on the amendment? Mr. Chudleigh.

Mr. Ted Chudleigh: Does the government have anything else to say on this? I just take it that the silence, or that the response of the government would indicate that they support what Mr. Gregory has commented on in the bill. Mr. Zimmer, is that correct?

You basically support his comments? That's what I'm asking.

Mr. David Zimmer: He has made an accurate statement of the intention of this amendment and the effect of the amendment in practical terms.

Mr. Ted Chudleigh: Thank you very much, Mr. Zimmer. I have no further questions on this.

The Chair (Mr. Lorenzo Berardinetti): There being no further debate, shall the amendment carry? All those in favour? Opposed? Carried.

Shall section 2, as amended, carry? Those in favour? Opposed? Carried.

There are no amendments from sections 3, 4 and 5, so we'll just put the vote together on these, at the will of the—

Mr. Peter Kormos: No, do number 3.

The Chair (Mr. Lorenzo Berardinetti): Okay. We'll do them separately, then. Section 3: I'll put the question. Shall section 3 carry? Carried.

Any debate on section 4?

Mr. Peter Kormos: Please.

The Chair (Mr. Lorenzo Berardinetti): Mr. Kormos.

Mr. Peter Kormos: I'm just curious: Why would there not be a fixed date for coming into force? Because it seems to me that if there are in fact operators out there—and to date, there's been absolutely no evidence of any of the operators out there, unless Ticketmaster is outright lying; they were the ones that seemed to be fingered, but they denied that there's collusion between them and TicketsNow. Wouldn't it be fair and reasonable to give a fixed date so that if there are parties out there who have that relationship, they would have an opportunity to divorce—

Interjection.

Mr. Peter Kormos: Yeah—to divorce themselves from the resale operator? If there are people out there colluding, I'm sure that there are tickets that are already in the possession of the reseller for events six months from now and that were acquired three months ago. I don't know whether there's any quick explanation for that.

Mr. David Zimmer: It's our intention, after royal assent, that we will consult with the appropriate parties to fix the proclamation date.

Mr. Peter Kormos: Who would those parties be?

Mr. David Zimmer: Those who have an interest in the legislation.

Mr. Peter Kormos: Well, only two people showed up for the hearings.

Mr. David Zimmer: We're an inclusive and consultative government.

Mr. Peter Kormos: Tell that to your colleagues who have been slapped around by the Premier's office.

The Chair (Mr. Lorenzo Berardinetti): Further debate on section 4? Seeing none, shall section 4 carry? All those in favour? Opposed? Carried.

Section 5: Any debate on section 5? Shall section 5 carry? Those in favour? Opposed? Carried.

Shall the title of the bill carry? It's carried.

Mr. Peter Kormos: Now we have some debate.

The Chair (Mr. Lorenzo Berardinetti): Okay. Is there any debate, then, on Bill 172, as amended?

Mr. Peter Kormos: Yes, there is.

The Chair (Mr. Lorenzo Berardinetti): Mr. Kormos.

Mr. Peter Kormos: This is bizarrer and bizarrer, every step of the way. There was an image painted of all sorts of scalpers out there that had partnerships with primary ticket sellers. It was painted as something that was dangerous to the Canadian fibre—for one, I mean.

It seems to me that when the Springsteen organization complains about resellers, what they're really complaining about is that they weren't charging enough for their tickets in the first instance and they should have been making that money rather than the reseller, because obviously—what the reseller does is test the market. The reseller determines what a ticket is worth, the real commercial value of a ticket to a particular event, a sporting event, an entertainment event, what have you.

So first we were told about this incredible illness out there, even though I haven't read about a ticket scalping charge being laid in years, literally years. I recall a couple from outside Maple Leaf Gardens, minor prosecutions. And then we were told—and correct me if I'm wrong—that the Attorney General would only act if there were a complaint, that it wouldn't be proactive. He wouldn't be policing the reseller community.

If this is such an ill out there—as far as I'm concerned, if somebody wants to pay however many dollars to go to a commercial concert, a rock and roll concert, what have you, by all means, feel free to do so. Who am I to tell them not to? Similarly, if somebody wants to sell a ticket, quite frankly, even as a reasonably left-wing socialist, as far as I'm concerned, let them sell the darned thing.

Mr. Ted Chudleigh: I find this amazing.

Mr. Peter Kormos: Well, no. If there's a market out there, quite frankly, that's their business. I didn't know that we as a government were that interested in regulating commercial activity when we're not talking about necessities.

Good God, you folks will ignore the plight of hydro consumers, but you'll purport to protect people who want to buy tickets to Justin Bieber. That seems to me some pretty screwed up priorities. It really does; think about it.

But then we have the Ticket Speculation Act itself. I stated very clearly in the Legislature that that Ticket

Speculation Act itself permitted the prosecution of resellers of any sort, whether they're colluding with the primary seller or not. It does. You can also charge people with conspiracy to commit.

1330

You can deal with the big-volume buyers. I'm surprised that you didn't. If you were really concerned about people who use—was it called a bot system? Bot system, is that what it's called? Whatever the name of it is, I'm surprised that you didn't include regulations that require primary sellers to design software to protect themselves from these big-volume buyers.

I remember a day, again, when kids used to line up for tickets to a concert outside Sam the Record Man or Maple Leaf Gardens, and you were literally restricted to four tickets each. You don't, Mr. Naqvi, because you're too young. But those were the days when scalping was quite an honourable profession because most people didn't want to line up for 24 hours, and they were more than pleased to pay somebody an additional 50 bucks to line up for them, especially if you were not 17 years old anymore. Yet those scalpers got prosecuted. Those were the days when undercover cops would police around Maple Leaf Gardens, and if somebody was peddling a couple of Maple Leafs' tickets—they didn't have the Provincial Offences Act then, but they'd get a ticket.

For the life of me, this is Alice in Wonderland sort of stuff. You aren't prosecuting scalpers now even though the law—the existing act—gives you all the authority and power to prosecute all scalpers, whether they're related, as the ones you purport to deal with in this bill, or ones who are unrelated using computer systems. Why wasn't there a bill saying that primary sellers are obligated to prevent people from buying in lots of more than 20 or 30? But then again, what if Bell Canada wanted to buy 100 tickets to a concert for its employees? I guess that would be problematic because you'd be preventing them from doing precisely that.

But you haven't been very creative here at all. I think this is knee-jerk stuff. I don't think it's very well-thought-out stuff.

It's also stuff that we're basically told is never going to be implemented. Why weren't you going after Tickets-Now with the existing legislation when that existing legislation gave you the power to do it? It says, "Scalping is an offence." You were worried about the size of the penalty? You could have gotten injunctions based on the statute, the Ticket Speculation Act. You didn't need to criminally prosecute; you could have enjoined Tickets-Now from selling scalped tickets. But you haven't done that either.

We're going to vote for this because it's no big deal; it's just silly. I suspect the government will again play its silly stunt of forcing a recorded vote, which is getting really tedious, by the way, because it looks silly. I don't know what point you're trying to make, what kind of record you're trying to create. If you think that's going to help you in the upcoming election, I don't know what

you guys have been smoking. I suspect I know, but I don't, in fact, know.

So here we are. We're going to vote for the bill. I think it's been an interesting exercise, but very unfulfilling. There we go. Let's get on with it, Chair.

The Chair (Mr. Lorenzo Berardinetti): Okay, any further debate on the bill, as amended? Mr. Chudleigh.

Mr. Ted Chudleigh: I'd like to put a comment on the record. There seems to be an assumption among people that Ticketmaster is, in fact, diverting tickets and that we're trying to catch them at it.

I would give you the example of a rock star coming into Toronto, and they're going to put on a show, and they're going to distribute their tickets through Ticketmaster. If they thought that Ticketmaster would divert tickets to someone else and sell those tickets at twice the price, the extra money that the secondary seller got, really, was stolen from the rock star. So if the rock star believed, or there was a strong suspicion, that Ticketmaster actually did divert tickets, Ticketmaster would be out of business.

Ticketmaster and their parent company are the largest ticket sellers in North America. So I think the assumption that the government has made can be hurtful and harmful economically in the marketplace to a company that's operating legally in Ontario, and I think you just should recognize that fact.

The Chair (Mr. Lorenzo Berardinetti): Any further debate?

Mr. David Zimmer: Yes, just a second.

The Chair (Mr. Lorenzo Berardinetti): Mr. Zimmer?

Mr. David Zimmer: Just let me make these four points, first, with respect to the NDP's comment that this legislation is just silly, and, second, with respect to the PC comment that the legislation is harmful and hurtful. First, we all know—

Mr. Ted Chudleigh: That's not what I said.

Mr. David Zimmer: Well, I'll check Hansard. You used the words "hurtful" and "harmful."

Mr. Ted Chudleigh: The assumption is hurtful and harmful, not the act.

Mr. David Zimmer: The fact of the matter is, there were many, many complaints about people being forced to the secondary market—many, many complaints. In fact, there was a widely held public concern about large-scale market manipulation. In fact, those two comments about the individual complaints and market manipulation were opined on at length in the various media.

Number two, scalping is illegal. It's already illegal; it remains illegal. Scalping tends to apply to individuals, tiny operations, that sort of thing. We can deal with those people at that level.

What this legislation does is ensure that there's a fair business model that protects the public against market manipulation—that's the mischief; that's the harm that we're after—to ensure that Ontarians have a level playing field when they spend their hard-earned enter-

tainment dollars. They deserve fairness and a level playing field.

At its heart, then, this is a piece of consumer protection. This is all about consumer protection. That's why the government is moving forward with this bill.

The Chair (Mr. Lorenzo Berardinetti): Are we ready to vote? Mr. Kormos?

Mr. Peter Kormos: Then why won't the government protect consumers against performers like Lady Gaga?

Mr. David Zimmer: That's an artistic question.

Mr. Ted Chudleigh: A very good point.

The Chair (Mr. Lorenzo Berardinetti): Shall Bill 172, as amended, carry? Carried.

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

Thank you.

Mr. Peter Kormos: It's been a pleasure doing business with the government on this one.

The Chair (Mr. Lorenzo Berardinetti): Thank you, Mr. Kormos. Thank you for that endorsement.

We're adjourned.

The committee adjourned at 1340.

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