

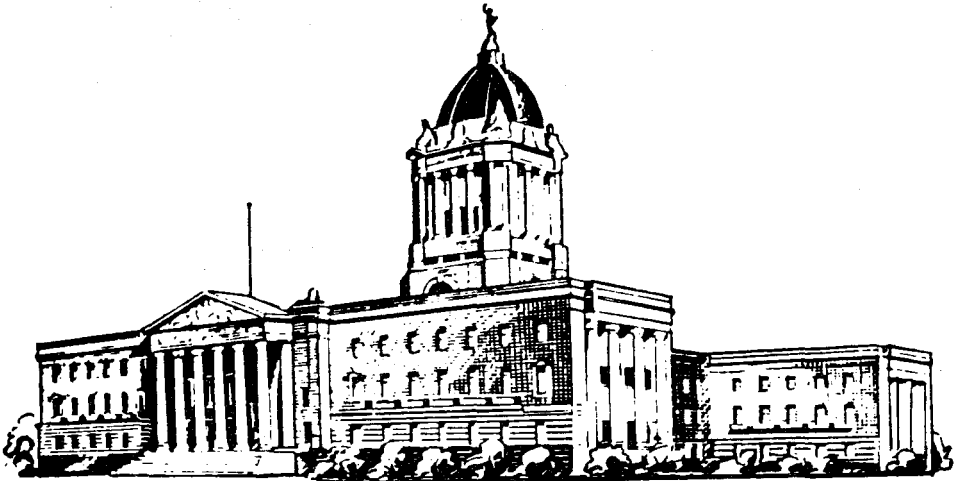


Legislative Assembly of Manitoba

**STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS**

Chairman

**Mr. J. Wally McKenzie
Constituency of Roblin**



Tuesday, June 27, 1978 10:00 a.m.

**Hearing Of The Standing Committee
On
Industrial Relations
Tuesday, June 27, 1978**

Time: 10:00 a.m.

CHAIRMAN: Mr. J. Wally McKenzie (Roblin).

Nomination and Election of Mr. McKenzie as Chairman. (Agreed).

MR. CHAIRMAN: The first order will be the quorum. Would somebody care to put a motion that we establish a quorum. There is how many on the Committee? Eleven members on the Committee; six would likely constitute a quorum if you so desire. All agreed? (Agreed).

We also need a motion for recording and transcribing. (Agreed).

Are there any delegations or anybody wishing to report or speak on Bill No. 28, An Act to amend The Payment of Wages Act? Mr. Coulter. Any others? Proceed, Mr. Coulter.

BILL NO. 28 — AN ACT TO AMEND THE PAYMENT OF WAGES ACT

MR. COULTER: Thank you, Mr. Chairman, members of the Committee.

Naturally we were somewhat disturbed in the court decision that indicated that the legislation as previously approved by the House was invalid, and at the same time very pleased to find that the department has proceeded to amend the legislation to take care of the errors, or fault, in the writing of the legislation. This is a piece of legislation that the Manitoba Federation of Labour was very pleased to see placed on the books and improved in the last number of years, and naturally we wish to see it to continue and to function as it was intended. We see that with these amendments, that is pretty well assured, unless there is some other fault that might be found by some subsequent legal people and the courts, but we'll just have to wait and see that.

The one aspect that continues to disturb us with respect to this matter, is the fact that the cited case that went to court and determined that the legislation wasn't written properly, seems to be now excluded from any possibility of redress. And we just wonder whether that is mandatory under the legislation, or whether there cannot be some means whereby that case can be re-heard under the present legislation, whether the statutes of limitations would prohibit that, or whether it is at all fair for an employer who has evidently broken the law and through a technicality, is able to escape from payment of wages as required by the intent of the law, as previously written. And that's the only matter I would like to leave with you, Mr. Chairman, and members of the Committee, as to whether you would look into this matter to see whether it is not possible to approve the legislation in a manner in which the case in question could be covered or re-heard, or some redress given to those people that were underpaid in that particular case. That's all I have, Mr. Chairman.

MR. CHAIRMAN: Any questions of Mr. Coulter from the Committee members?

MR. JENKINS: Just one question, Mr. Chairman. How long ago, Mr. Coulter, was the ruling made on the case that was set aside by the court?

MR. COULTER: I didn't bring it with me. It's a matter of months, I would say probably 5 or 6, I'm not sure. During the course of the winter I think, it was publicized.

MR. JENKINS: Thank you.

MR. CHAI Mr. Coulter? I thank you kindly, AN: Any more questions of -- -- Mr. Coulter, for your presentation.

MR. COULTER: Thank you.

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MR. CHAIRMAN: Are there any more presentations on Bill No. 28? If not, shall we proceed? Clause by clause, Bill No. 28, An Act to amend The. . . Mr. Fox.

MR. FOX: I wonder if we could get a legal opinion from the legal counsel in respect to the question that Mr. Coulter raised, and if there is any possibility of amending the Act before we go through it clause by clause to accomplish the redress, if possible.

MR. BALKARAN: Mr. Chairman, two points raised by Mr. Coulter. One, dealing with the statute of limitation, I certainly don't know when the cause of action arose. . .

MRS. PRICE: 1976.

MR. BALKARAN: In 1976, so that it is certainly within the statute of limitation, and is not yet statute barred. The question as to whether the legislation should now be retroactive to disturb the decision of the judge, is a matter of policy and for this House to determine. As a general rule, it is always repugnant to set aside a judgment of the court where people have regulated the affairs by other decisions over the years, and indeed suddenly to find that the Legislature has now come back with retroactive legislation except in the most glaring situation where perhaps great hardships will occur to a large number of people. I cite the situation of the Government of Saskatchewan in their recent case where they had to pass retroactive legislation because millions of dollars were involved in lost taxation revenues.

In this particular case, if the House should decide to make it retroactive to affect even — and we have I believe, not just one decision, I think we possibly have three decisions, one which went all the way to the Court of Appeal. Now if the House wants to go back and reach a decision on the judgment of the Court of Appeal and say, well notwithstanding that decision, the person or persons involved now have the right to go back to court to have the case re-adjudicated, the House is certainly master of its affairs and can do that.

MR. FOX: Mr. Chairman, in that case, I would suggest respectfully to the Minister and her staff, whether they wouldn't consider having a look at trying to accomplish some redress in these particular cases, because, actually the ruling was on the technicality of law, not on the validity of the judgment, and I think that what we want to do is to have justice in this province, and I would appeal to the Minister to have another look at whether there is any way we could accomplish redress in this respect even though there has been a ruling, but as I suggest and the legal counsel has suggested, the ruling was on a technicality of law, not on the validity in respect to the claim.

MR. CHAIRMAN: The Minister — would you like to reply to that?

MRS. PRICE: I think Andy should, with his legal attitude toward it.

MR. CHAIRMAN: Okay, Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I do not think it would be difficult to have Section 15 of this bill amended in such a way to do precisely what the honourable member is asking. Again, I say that it will be for this committee and the House to determine whether they want that. The drafting would create no problem.

MR. FOX: Mr. Chairman, I would move that we have the amendment drafted in respect to the judgment, if I can get the support of the committee.

MR. CHAIRMAN: Would any member care to speak to the presentation and motion by Mr. Fox. Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, might I add that there may be a way out to provide specifically for the two or three cases, if there is, perhaps a Private Member's Bill as we've had in the past for the relief of (a), (b) or (c), as the case might be, which would deal specifically with those three cases to authorize the Courts to rehear those cases based on the new legislation, rather than enacting retroactive legislation in a general way, which might be open to criticism.

MR. FOX: Mr. Chairman, I wouldn't like to set a precedent, by having a Private Member's Bill in specific, because I think that then you are opening up a Pandora's box. If this bill could accomplish the same thing, and achieve the redress that is necessary since it was an oversight or omission in law, and a technicality was created which allowed a loophole, I would appreciate having it done

that way instead of setting a Private Member's Bill as a precedent.

MR. BALKARAN: I wonder if I might suggest, and of course this is maybe stepping out of my bounds here, that perhaps the committee consider the bill but Section 15, and maybe the department might want to take a look at each specific case of the involvement, to see whether perhaps some of them can indeed be opened up, because I understand some of them involve bankruptcy matters which may be outside the scope of provincial legislation.

MR. FOX: Mr. Chairman, if the Minister is prepared to do that, I am prepared to take her word that she will try to achieve the wishes of the committee in this regard.

MR. CHAIRMAN: The Minister of Labour.

MRS. PRICE: The thing that is a little alarming, Mr. Chairman, is that we are going to be charging the same person twice, that has been settled and then we re-open it and charge them again. It is something that we are going to have to take an awfully close look at.

Could we go on with this, and then come back to check on how we could go about amending it to that effect?

MR. FOX: If we have the Minister's assurance that she will try to alleviate the hardship that was created because of a technicality, I think that the committee should be prepared to go along with that.

MR. CHAIRMAN: It's been suggested by Mr. Balkaran that possibly by the time the bill gets to third reading, the Minister and her staff could have a judgment to bring before the committee at third reading regarding this matter, if that's agreeable to the committee members.

Mr. Jenkins.

MR. JENKINS: Well, are we going to proceed with the bill then except for Section 15? I don't know how we can report a bill and transfer it to House or we could hold the bill in committee while the Minister and her staff and her department got this thing ironed out one way or the other, but I don't know how we can pass the bill with the exception of Section 15 and report it back to the House, because we can't.

MR. CHAIRMAN: I stand to be corrected. The Clerk tells me that we can only amend it at the report stage.

MR. JENKINS: Yes, so if the Minister can assure us that she'll take a good look at it, and perhaps have an amendment drafted and ready for report stage, I think the committee could be prepared to deal with the bill as it is before us today.

MR. CHAIRMAN: Any other comments on the matter. The Meer for Seven Oaks.

MR. MILLER: As I'm not a member of the committee, I can't vote, but perhaps I can speak. I don't know the case, I wasn't here during the presentation, but if there is any question and the Minister is not yet determined in her own mind what she can do, if anything, then the bill, rather than being reported to the House, could simply be held here, and the Minister, at her request, the committee can be reconvened either Thursday or next Tuesday and the Minister can then report what she can do, and what she is prepared to do, because to deal with a bill piecemeal, you can't report it out and hold one clause back, you can only delete that clause, in which case you are going to have to come back anyway, for that clause. My suggestion is, if all matters have been discussed in the bill, you simply hold it, and at the call of the Chair or the call of the Minister, it can be reconvened.

MR. CHAIRMAN: The Honourable Minister.

MRS. PRICE: Well, I think it's of utmost urgency that we get it settled today. There are cases that are waiting. The lawyers will not handle them anymore because of the invalidity or whatever with respect to them, the way the wording is now in the Act, and it's of utmost urgency that we get this through. So we are going to have to one way or the other decide what it is. Maybe Mr. Tallin has some words to add to this? —(Interjection)— Maybe you could look at it?

MR. TALLIN: I'm afraid I'm not very familiar with the bill, really.

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MRS. PRICE: We are discussing — there are approximately three cases that have been settled, and the members of the opposition here are wanting to have Section 15 changed in order to re-open their cases.

MR. CHAIAN: Mr. Fox.

MR. FOX: We have to go to report stage anyway with this bill. All I'm asking is that the Minister give us assurance that her and her staff will try to see if there can be made an amendment in order to have redress for those people who got a ruling on a technicality. They didn't get a ruling on the fairness or on the judgment per se, they got a ruling on a technicality, and all I'm asking is that this committee consider and ask the Minister to see if she can't accommodate the committee in respect to trying to alleviate this hardship that was created because of a technicality. Now we've got a lot of legal talent here, and I'm very aware of that, and I think that they should be able to find a way to take care of those two or three cases that did receive a ruling on the technicality, not on fair judgment that they were asking for. If we can get that assurance, we can proceed with the bill to report stage, and at that stage, the Minister can bring in an amendment which will cover that particular item, and we will be finished.

MR. CHAIRMAN: Agreed to proceed?

MR. FOX: If I have the Minister's assurance.

MRS. PRICE: I'm prepared to.

MR. FOX: Very good.

MR. CHAIRMAN: Bill No. 28, An Act to amend the Payment of Wages Act.
(Clauses 1 to 10 of Bill 28 were read and passed.)
16(5) — an amendment.

MR. COSENS: Mr. Chairman, on the motion that the proposed new Subsection 16(5) of The Payment of Wages Act as set out in Section 11 of Bill 28, be struck out and the following subsection substituted therefor: Evidence of compliance with Subsection 15(2), 16(5), Where the appellant under this section is an employer, he shall at the time of filing his appeal, file evidence of compliance with an order of the board under Subsection 15(2), and upon completion of the hearing, the judge may order the disposition of the moneys paid to the director in such manner as the judge considers just.

MR. CHAIRMAN: Any discussions? Mr. Jenkins.

MR. JENKINS: Yes, could we just have a brief explanation of why the amendment is moved in, because what we see before in the bill is that he would pay the money in, and now we are finding out that he may pay the money in, and what is the reason for the change?

MR. BALKARAN: Mr. Chairman, on the 15(2) of the Act, the order is made for moneys to be paid to the director. The judges of the County Court, including the Chief Judge, requested and suggested that moneys are now going to be paid into two different places. The suggestion was, surely you should pay the money to the director, and the order of the judge will then order the disposition of that money, rather than having possibly moneys paid into two different places. His contention was that the order under 15(2) should be enforced, and that if he hasn't complied, he cannot come to the Court of Appeal now to hear his case.

MR. JENKINS: Well, the present section that's in the bill is, where he has failed or refused to pay. Now are we making the assumption that he has paid it, because. . . ?

MR. BALKARAN: No, he must pay, or else he is out of court.

MR. JENKINS: Oh, I see.

MR. CHAIRMAN: The amendment as proposed, 16(5)—pass. Section 11—pass, as amended.
(The remainder of Bill 28 was read clause by clause and passed.)
Preamble—pass. Title—pass. Bill be reported.
No more business before the Committee? Committee rise.