



ISSN 1180-4386

**Legislative Assembly
of Ontario**

Fourth Session, 37th Parliament

**Assemblée législative
de l'Ontario**

Quatrième session, 37^e législature

**Official Report
of Debates
(Hansard)**

Thursday 15 May 2003

**Journal
des débats
(Hansard)**

Jeudi 15 mai 2003

**Standing committee on
finance and economic affairs**

Highway Traffic Amendment Act
(No Conveying of Passengers
for Compensation), 2003

**Comité permanent des finances
et des affaires économiques**

Loi de 2003 modifiant
le Code de la route
(aucun transport de passagers
moyennant rémunération)

Chair: Joseph Spina
Clerk: Katch Koch

Président : Joseph Spina
Greffier : Katch Koch

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Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Thursday 15 May 2003

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 15 mai 2003

The committee met at 1002 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr Joseph Spina): The committee on finance and economic affairs will come to order. The first item on our agenda is the adoption of the subcommittee report dated May 7, 2003. The report of the subcommittee was to consider the method of proceeding on Bill 2, An Act to amend the Highway Traffic Act to restrict the conveyance of passengers for compensation. Does everyone have a copy of this with the four recommendations? Could we ask someone to move its adoption?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): If I may make a comment on item 3 of the subcommittee report, "That the deadline for submissions be Wednesday, May 14, 2003, at 12 noon," we were under the impression that it was 4 pm. It might have been a mistake on our end, but we did get some submissions, substantial submissions with about hundreds of signatures, supporting the bill a little later in the afternoon and they were handed in to the clerk by about 3:40 pm. If the subcommittee will allow us to include those submissions, I would really appreciate that.

The Chair: You need to move an amendment to item 3 of the subcommittee report.

Interjection.

Mr Gill: The submissions were supposed to be in by noon. Some of them came in three hours later, so I'm just making a request.

The Chair: Can I clarify, if I may, Mr Bisson? There were written submission made to the committee and they did not get received by noon, as was decided by the original subcommittee, so Mr Gill is asking that we extend that deadline in order to be able to receive those written submissions to the committee.

Mr Gilles Bisson (Timmins-James Bay): I don't have any problem giving consent to that, but I think we end up with this problem when we try to rush the legislative process. That's what's basically happened here. In a rush to get this bill through, people had almost less than a week to respond to this. I think this is an example of why we shouldn't be rushing the legislative process.

The Chair: Any other comments on that amendment? All in favour of the amendment to change the report of the subcommittee? All opposed? Carried.

Could I have a motion to adopt the subcommittee report as amended?

Mr Marcel Beaubien (Lambton-Kent-Middlesex): Yes. Do you want it read into the record?

The Chair: Yes, please, sir.

Mr Beaubien: Your subcommittee met on Wednesday, May 7, 2003, to consider the method of proceeding on Bill 2, An Act to amend the Highway Traffic Act to restrict the conveyance of passengers for compensation, and recommends the following:

1. That the committee meet in Toronto on Thursday, May 15, 2003, for clause-by-clause consideration of Bill 2 from 10 am to 12 noon.

2. That the committee shall post information regarding the meeting on the Ontario Parliamentary channel and on the Internet.

3. That the deadline for written submissions, as amended, be Wednesday, May 14, 2003, at 4 pm.

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

The Chair: Are there any further comments? Shall the subcommittee report be adopted as amended? Thank you.

HIGHWAY TRAFFIC AMENDMENT ACT
(NO CONVEYING OF PASSENGERS
FOR COMPENSATION), 2003
LOI DE 2003 MODIFIANT
LE CODE DE LA ROUTE
(AUCUN TRANSPORT DE PASSAGERS
MOYENNANT RÉMUNÉRATION)

Consideration of Bill 2, An Act to amend the Highway Traffic Act to restrict the conveyance of passengers for compensation / Projet de loi 2, Loi modifiant le Code de la route pour restreindre le transport de passagers moyennant rémunération.

The Chair: If we wait a moment, Mr Koch will pass out copies of the amendments.

Mr Monte Kwinter (York Centre): On a point of order, Mr Chair: These amendments are normally government motion number one to whatever they are, and these aren't numbered. Is there some sequence or do we just have to play it by ear?

The Chair: I'm seeing them for the first time myself, sir.

Interjection.

I think, as Gilles indicated, we'll probably go by the number of each section and try to address them individually as we go through that.

We have moved adoption of the subcommittee report and that's been carried. We now move to clause-by-clause consideration of Bill 2 in the name of Mr Gill. Are there any comments, questions, or amendments to any section of the bill, and if so, to which section?

Mr Gill: First of all, I want to take the opportunity this morning to thank the subcommittee as well as the committee for allowing me to bring this bill forward at a very—I wouldn't call it speedy—expedient pace. I think this type of legislation is long overdue; I mean years. I'm glad we're finally bringing it forward.

I move that section 2, subsection 40.1—

The Chair: Could you hold on for a moment please, Mr Gill? Sorry. We're going to section 2, so what I need to do is move section 1 first. Could I have that first, please?

1010

Mr Gill: Mr Chair, if I may add, some of these amendments do actually have an effect of removing subsections 1(1) and 1(2). They're going to be eliminated. So if you want, I can move that we eliminate 1(1) and 1(2).

Mr Bisson: You're talking about right at the beginning of the bill, after "Her Majesty," you want to remove (1) and (2)?

Mr Gill: Yes, I'll explain to you what that is, Mr Bisson, if I may, through the Chair.

Mr Bisson: So you want to eliminate section 1?

Mr Gill: Yes.

The Chair: The procedure, if I may advise the committee, is that if you're going to be substituting those elements of section 1, you need to defeat section 1, and then it would be reinstated when the motion is made for section 2.

Mr Bisson: He has two options. He could have given us an amendment saying "strike out (1) and (2)" or vote against the motion. My question to Mr Gill—

The Chair: The first suggestion, by the way, is not in order.

Mr Bisson: He could have submitted an amendment to strike the section, and that would have been in order. Of course you can.

The Chair: I defer to the clerk, but it's our advice that you can't do that.

Mr Bisson: Explain to me why you can't move an amendment to strike a section. We've done that numerous times before. I don't want to get caught in this minutiae. I want to find out why.

Clerk of the Committee (Mr Katch Koch): The way to defeat a section is to vote against it.

Mr Bisson: I understand that. That's not my point. My question is, there's nothing that prevents a member

from moving an amendment that strikes a section, is there?

The Chair: Just a moment.

Mr Bisson: I don't want to get caught up in the minutiae. Let's not get caught up in there, because I really don't care about that. That's not my initial question. My question is, why do you want to vote against this entire section? That's my real question.

Mr Beaubien: First of all, I think we have to move something, because we're debating something that's not on the floor right now. So I think somebody's got to move section 1, because there's nothing on the floor right now to debate.

Mr Bisson: As I understand, Mr Beaubien, we're on section 1.

Mr Beaubien: No. Nobody's made a motion on section 1.

Mr Bisson: We don't have to make a motion on section 1. You opened the committee hearings. We are in the first section of the clause by clause. He put us into a position of clause by clause, and we're now talking about section 1, are we not, Chair?

The Chair: Yes.

Mr Bisson: So my question to Mr Gill is, if you're suggesting we vote against section 1, I would like to know your rationale.

The Chair: OK. Can you hang on a moment.

Mr Bisson: Sure.

Mr Kwinter: Mr Chair, we received four amendments. None of them refer to section 1 of this bill, and Mr Gill is saying that he's going to explain it. It would seem to me that it should be explained by something that we could see. Right now, I don't know what we're voting on because there's nothing that we can see.

Mr Bisson: We're not voting on anything.

Mr Kwinter: We're not voting on anything.

Mr Bisson: At this point, we're in clause by clause, we're in section 1, and I want to know why he wants us to vote against—

Mr Kwinter: Mr Chair, with respect, this is effectively an amendment to remove that section, and you would think that when the government tabled its amendments, it would include that particular provision so that we could see what it is that you're proposing.

Mr Gill: I must point out that this is a private member's bill and not a government bill. So it's not a government amendment per se. It's an amendment proposed by me.

Mr Bisson: It doesn't change the rules, though.

Mr Gill: I understand. I just wanted to make sure that we understand that it's a private member's bill.

Mr Bisson: I think we figured out it was a private member's bill.

Mr Gill: Thank you. Mr Chair, if I may.

The Chair: Go ahead and explain.

Mr Gill: I have two options. I can request or I can make an amendment deleting section 1.

Mr Bisson: I don't care. You want us to vote against section 1. I want to know why.

Mr Gill: OK.

Mr Bisson: It comes to the same thing to me. Monte, are you OK with that?

Mr Kwinter: I'm happy with that.

Mr Bisson: OK. You could have moved the amendment; you didn't. But now you're going to recommend to us to vote against section 1. I need to know why the author of the bill wants us to vote against section 1 of his own bill. It's a bit of an odd situation. Go ahead.

Mr Gill: I need the time from the Chair. I don't think we should get into a direct discussion.

The Chair: Can I ask a question here? The only amendments that we have before the table all have to do with section 2. So, with respect to section 1, are you moving that it be deleted? Is that your request?

Mr Gill: No.

The Chair: I'm putting the question on section 1 forward. What I need is for you to decide whether you are going to adopt section 1 of the bill or not.

Mr Gill: I actually want the committee to vote against 1.

The Chair: Why?

Mr Gill: I'll explain why.

The Chair: OK, go ahead.

Mr Gill: Let me consult with the ministry for a second, if I may, Chair.

The Chair: We're going to take a five-minute recess.

The committee recessed from 1016 to 1024.

The Chair: I know we're all a little rusty but let's get this straight.

We will now address section 1 of Bill 2. Are there any comments, questions or amendments to section 1?

Mr Bisson: Back to my original question: why will you be asking us to vote against section 1?

The Chair: That's hypothetical. I haven't had any motion yet. I asked for any amendments. None have been moved so far.

Mr Gill: I need to request that the committee allow me to remove section 1. The reasoning behind that is that section 1 deals with, if somebody is a repeat offender, then the vehicle plate will not be renewed. We're taking that effect of this law away from doing that. The reasoning behind that is that somebody could borrow or rent a vehicle and go and do an illegal act. It is very difficult to control that or implement the penalty—not to renew the sticker of a vehicle. This effectively, by voting down section 1, removes that provision.

The Chair: So you're not advocating an amendment. You're just speaking against adopting section 1 of the bill.

Mr Gill: Correct.

The Chair: Thank you. Mr Bisson, did you want to make a comment on it?

Mr Bisson: I got a couple of questions. First of all, did you not consult prior to drafting the bill that that would have flagged that this may be an issue?

Mr Gill: This issue has actually been going on for 20 years.

Mr Bisson: If that's the case, why didn't you—

Mr Gill: I have the floor, Mr Bisson. Thank you.

They have approached different levels of government. That's why this is here as a private member's bill. In the consultation, even though we originally felt that the plate denial is an appropriate penalty, when we came down to actually finding a method of applying that, it was discovered—perhaps we should know when we bring these bills. I have yet to see a bill come in and everything has been thought of. Perhaps we should have thought of it before, but the practicality is that things come up as you—that's the procedure. That's the reason for coming to committee, actually, so we can sort these things out. We can try to remove things that may be impractical. But I wish I were so perfect that we had thought of everything earlier.

Mr Kwinter: In the explanatory note the issue you're trying to correct is referred to under section 69 of the Provincial Offences Act. It would seem to me that you should not be amending the Highway Traffic Act if the penalty you're trying to prevent is covered under the Provincial Offences Act. I would say that a cleaner way of doing it is just to put an exclusion that, notwithstanding these penalties, a person who is convicted shall not be subject to the Provincial Offences Act. It removes that provision. It isn't covered in the Highway Traffic Act; it's covered in the Provincial Offences Act under section 69.

Mr Beaubien: Before we go any further, we can vote in favour or against it but I'll move section 1 because that has not been moved yet.

The Chair: Further discussion?

Mr Bisson: I come back to Mr Gill. Far be it from me to say that you're imperfect. That isn't the point. What I'm saying is, if this has been an issue for some 20 years, is it the first time that somebody approached you after you introduced your bill that said we should not give the authority to refuse the issuance of a plate? Was it only after you drafted the bill that somebody caught that, or what?

Mr Gill: That is correct, Mr Bisson. This was discovered—

Mr Bisson: Who has that concern, out of curiosity? Is it the cab operators who have the concern, is it the ministry or is it the scoopers? Who's worried about that particular issue?

1030

Mr Gill: When the issue was brought to me, I also felt it would be impractical to perhaps implement that. If it's a rental vehicle, how do you go after the plate to deny that if somebody else, a third party, commits the offence?

Mr Bisson: We've passed similar legislation before on rental vehicles, and you exclude them. All of a sudden you're now saying, "I thought it was impractical when I drafted the bill." It brings me to the question, why did you put it in? But certainly somebody came to you and said, "This should not be in the bill." Was it the ministry that suggested that? Was it stakeholders who suggested it? I just want to get a sense of where this concern comes from. Who's concerned? Is it the ministry? Is it stakeholders?

Mr Gill: It was the ministry.

Mr Bisson: OK, that's what I wanted to know. So the ministry thinks that may be a problem. The problem I have is—this is to leg counsel—I don't have the Highway Traffic Act, so it's a little bit hard to put this into context. I read through the bill. Is it through section 1 by way of the amendments in (1) and (2) that the sticker is going to be refused? It's pretty hard to follow that without having the Highway Traffic Act in front of you.

Mr Michael Wood: Yes, that is correct. The lawyers from the Ministry of Transportation could intervene since it is the ministry that has the primary responsibility for giving opinions on the Highway Traffic Act, as that ministry administers the act, but I can read you subsections 7(10) and (11).

Mr Bisson: I'm just trying to figure out how it would have worked, because when I read (1) and (2), it talks about how it's going to fit in, but nowhere in here does it say—it talks about “a fine imposed on conviction of an offence under section 40.1,” but it doesn't talk about the refusal of issuing a sticker or a new plate. I'm just wondering how that all tied in.

Mr Wood: The present subsections 7(10) and (11) of the Highway Traffic Act provide that a new permit will not be issued unless a fine has been paid. It does make specific reference to the fact that an order or direction can be made under section 69 of the Provincial Offences Act. That is also an answer to Mr Kwinter's question earlier as to why we were amending the Highway Traffic Act and not doing an amendment to the Provincial Offences Act.

Mr Bisson: That brings me to the root of my question, which is: currently in Ontario if I have unpaid fines and I go to renew my sticker at the chamber of commerce in Timmins where that's done, they will not issue my renewal sticker until I pay those fines, correct, as per the Highway Traffic Act? Now that we remove section 1, if somebody does not pay their fine vis-à-vis the offence that may be created under this act, it would mean they wouldn't withhold the sticker from you.

Mr Wood: No. If this committee votes against section 1 in the bill, subsections 7(10) and (11) of the Highway Traffic Act—

Mr Bisson: Would still say “if you didn't pay your fine.”

Mr Wood: —would still say that. The only thing this bill in section 1 would do is add an additional ground for the refusal to grant a new permit to a person.

Mr Bisson: So if you do not pay your fine under this act, under the amendment that will make the Highway Traffic Act, you will still not be able to get a renewed sticker if you don't pay the fine?

Mr Wood: If you defeat section 1, the law stands as is. You can't get a new permit until you pay the fines that are imposed for a parking violation, for instance, but the fines that would be imposed for an offence under this act would not be additional grounds for refusal of a new permit.

Mr Bisson: OK, but I'm correct in my assumption that if I take my car, I go to Pearson airport, I scoop the

fare, I get a charge and I don't pay the fine, I can't get my sticker renewed if we vote against this section. They will not renew my sticker if I don't pay my fine if this section was defeated.

Mr Wood: No, I think it's the reverse. If this section is in, you can't get a new permit, but if you defeat this section—

Mr Bisson: That's what I'm asking.

Mr Wood: If you defeat this section, then failure to pay that fine would not be grounds for a refusal—

Mr Bisson: It would not be grounds. OK, gotcha. Under the Highway Traffic Act, if you don't pay fines, you can't get renewed. I was just wondering how that was going to work after.

Mr Wood: Those fines are fines imposed for a parking violation.

Mr Bisson: Basically, if we vote against this section, for somebody who doesn't pay their fine, there's no mechanism to collect.

Mr Wood: Somebody who doesn't pay their fine for this particular offence, but not for—the law stands the same with respect to other existing offences for which the permit can be refused.

Mr Bisson: What we've got in effect by voting against this section is a bill that says, “If you scoop a fare, you're going to get a fine. But by the way, if you don't pay the fine, don't worry. You won't lose your sticker.”

Mr Gill: Not true.

Mr Bisson: Well, explain it to me.

The Chair: If you like, we have ministry legal staff here that may be able to give the same—

Mr Gill: Mr Chair, you can get the ministry. What it does, though, Mr Bisson, is still—

The Chair: Is ministry counsel here or not? Sorry, hang on, Mr Gill. Ministry counsel is here?

Interjection.

The Chair: Could we ask you to step forward in the event that somebody wants a clarification, please? Could the counsel come to the bench, please? Thank you. I'll let Mr Gill, while you're getting settled, make his comment, and then we'll see if we can get to you.

Mr Gill: As soon as we get Mr Bisson's attention, I will—Mr Bisson? What it does is, even though your plate sticker is not being denied, your driver's licence can also be suspended; I think that's what the penalty is. Perhaps I'll ask the ministry to expand on that.

The Chair: If I could ask you also to state your name, as you know, when you begin speaking.

Mr Jamie Hanson: My name is Jamie Hanson. I'm counsel with the Ministry of Transportation. Mr Gill's explanation is correct. The original draft of the bill contained two primary sanctions for non-payment of fines: the plate denial that is under consideration right now as we discuss section 1, and the further sanction was denial of the driver's licence; that sanction would remain.

Mr Bisson: So non-payment would result in—when you come to renew your licence at the end of the three-year or whatever-year period, your licence is renewed?

Mr Hanson: That is correct.

The Chair: OK, we'll go to Mr Phillips. You have a question?

Mr Gerry Phillips (Scarborough-Agincourt): I think that answered my question. I guess the issue, then, is the explanatory note. When we debated this for second reading, a big part of it was plate denial—I think that's a big part of the explanatory note—and I gather we now are going to remove the plate denial. I guess just to help me along with why it originally was in and now why it should come out, either Mr Gill or—

The Chair: Would either counsel choose to respond to Mr Phillips's question, please?

Mr Gill: Basically, the idea was to put teeth into this law, but then we realized the scenario where the car is a rental vehicle. If somebody happens to take their dad's car, why should the plate sticker be denied? Or if it's a rental car, how can the plate be denied? So for that reason, we felt that perhaps the licence suspension—and as I understand it, contrary to what Mr Bisson says, it's not after three years that your licence will be suspended. It can be done right then and there—

Mr Bisson: That was going to be my next question: is it renewal or suspension?

Mr Gill: —through the computer, and then you are not supposed to be driving with the suspended licence.

Mr Bisson: So it will be suspension and renewal? It will be suspension, right?

Mr Gill: Suspension.

Mr Phillips: I'm sorry, Mr Chair. Just so I understand who actually gets the ticket, is it the person driving the car or is it the car owner who gets the fine?

Mr Gill: The person driving the car.

Mr Phillips: So that's clear in the bill here somewhere, I gather, is it?

The Chair: Any further questions, Mr Phillips?

Mr Phillips: No, I would just comment that it might have been helpful, during second reading debate, to have this—and maybe it's impossible, but it does change the basis on which, I think, many people there supported the bill. They may still like the bill, but we're making a relatively significant change, and perhaps the right change.

1040

Mr Peter Kormos (Niagara Centre): OK, we've got the suspension issue clarified, because it is a suspension, not a denial of renewal of the driver's licence. That's the standard. That's the status quo. The government has had to address this in other bills, for instance around seizure of vehicles being driven by a suspended driver, and they've had to exempt car rental companies and car leasing companies who retain title.

But you've got to help me here. Under section 2, the offence can be committed by the driver, and the offence in fact can be committed by the owner or lessee. So it's incorrect to say that the offence can be committed only by the driver. Is that fair?

Mr Hanson: Yes, that is fair. The current reading of the bill is “no driver of a motor vehicle ... and no owner

or lessee of a motor vehicle,” so the offence is applicable equally to both.

Mr Kormos: How does that jibe, then, with the proposal of Mr Gill, which I think I understand? Does that exclude an owner from having his or her right to renew their plates denied, even if they were convicted under what will be section 40.1? Do you understand what I'm saying?

Mr Hanson: Could you just put that to me again, please.

Mr Kormos: You're basically eliminating the non-renewal of plate as a penalty.

Mr Hanson: Correct.

Mr Kormos: Which is pretty standard. It's a pretty broad range of—I mean, I go there and it costs me a few hundred bucks each time I pay parking tickets. Right? Fair enough. But you want to remove this offence from one of those which can result in a prohibition of issuing a new sticker. Correct?

Mr Hanson: Correct.

Mr Kormos: Yet it can be owners and lessees who commit the offence.

Mr Hanson: Correct.

Mr Kormos: So those owners and lessees who in fact commit an offence and are convicted can have been convicted but not suffer the penalty of not having their licence renewed. Is that correct? That's the way it looks to me, but then again, I'm just from a small town.

Mr Hanson: The fine is still there.

Mr Kormos: Sure.

Mr Hanson: If the owner or lessee is issued the fine, the way the bill is structured, if they do not pay their fine—that is, the owner or the lessee—they too could have that sanction imposed.

Mr Kormos: This is where you've got to help me. For a fine imposed on conviction of an offence under section 40.1, right?

Mr Hanson: Yes.

Mr Kormos: So the conviction of an owner or lessee will be under 40.1?

Mr Hanson: Correct.

Mr Kormos: And the discussion is about whether or not section 1 should be incorporated as part of this bill. If section 1 is rejected, then nobody convicted under 40.1 can be the subject of a sticker refusal.

Mr Hanson: That is correct.

Mr Kormos: Including owners and lessees.

Mr Hanson: Correct.

Mr Kormos: Who are convicted? Do you understand what I'm saying?

Mr Hanson: Yes, I do.

Mr Kormos: Am I way off in left field here?

Mr Hanson: No, no.

Mr Kormos: I could be.

Mr Bisson: You should play the infield.

Mr Kormos: Left field is my expertise.

Mr Hanson: The problem is that there could be complicit owners and lessees but there could also be completely unsuspecting owners and lessees.

Mr Kormos: I understand. I don't think anybody here wants to penalize the prima facie innocent owner or lessee.

Mr Hanson: Correct.

Mr Kormos: How then do we incorporate the guilty owner or lessee? Because this is so slick. Do you realize the loopholes that we're generating here? I can see some clever people, people smarter than I am, structuring a little owner-lessee structure, weaving in and out so the vehicle can literally stay on the road, and it's a matter of paying for a "licence" by simply paying your fines. Do you understand what I'm saying, Mr Gill? We know what a cab licence costs.

Mr Bisson: Probably cheaper to do it this way.

Mr Kormos: I could buy two houses in Welland for what a cab licence costs here in Toronto. Do you understand my problem with this? I appreciate what you're doing, but is there a way of doing it a little more finely? You don't want your net to be so broad that it punishes innocent parties, but you don't want your net to be so tight that bona fide guilty people don't have the same penalty imposed on them that, heck, you or I do for not paying crummy parking tickets. That's the problem. I appreciate what you're trying to do. I don't think anybody is unsympathetic to the goal of ensuring that innocent owners and lessees don't get the shaft, but I'm sure you want guilty owners and lessees to get shafted big time.

Mr Gill: Mr Chair?

The Chair: Hang on, Mr Gill. We have Mr Bisson and Mr Kwinter.

Mr Bisson: I understood from Mr Gill's comments that what he's trying to do, as Mr Kormos and I have pointed out, is to remove the section which basically says that you lose your sticker. But as I read section 2, we're in a weird situation—and Mr Kormos has talked about that—where you might remove the sticker, but the fine can actually be given to the person who owns the car. So you can have somebody take a rental car, for example, and go out and do some scooping at the airport, and Tilden or National or whoever it might be could end up with the fine under the bill, because of the way this is written.

Mr Kormos: If convicted.

Mr Bisson: If convicted. My point is that if you only want the person driving the car to get it, if that's your stated objective—and I think that's what you want—we need an amendment here, which we don't have, to be able to deal with that. Because at this point, it's a bit of a loophole in the act.

The second issue, to me, is a bit of a troublesome one. It's far less expensive for me to pay a \$305 fine on a first offence and a \$500 fine on a second offence and to keep on scooping than it is to go out and get a licence from the GTA authority at the airport.

I'm not sure this thing is going anywhere near what the stated aim and objective of the bill was. The objective, as I understood it, at second reading, was that those who are the scoopers would be penalized by the

two mechanisms we talked about this morning: the sticker renewal and the fine. And now what we've got is that it would actually be cheaper under this act to get the fine than it would be to get a licence from the GTA.

Mr Gill, I think you need to go back and give us some amendments that clarify and fix this. Otherwise, we've got a problem. I won't be able to support this.

The Chair: We go to Mr Kwinter and then to either Mr Gill or Mr Kormos.

Mr Kwinter: On the same point, subsection 40.1(1) says, "no driver of a motor vehicle shall, and no owner or lessee of a motor vehicle shall permit a driver to" do these things, which means that regardless, if the driver is convicted, the owner is convicted, because the onus is on him to make sure that doesn't happen. Then we get back to the argument and discussion we're having now: how do you enforce that? What is the method? Does the owner automatically get the same fine as the driver? If the fines are not paid, does it then revert back that they're denied a right to renew their licence? I think this has to be clarified.

The Chair: Mr Gill, do you want to speak or do you want to defer to—

Mr Gill: Just to talk to Mr Kwinter's question, the person who is driving the vehicle is subject to the fine, not the owner, as I understand it. So the person who's driving it gets the ticket. The fines have been kept fairly high: the minimum for a first offence is \$305.

Interjection.

Mr Gill: No, it's not small.

Mr Kormos: You just got a 30% salary increase.

Mr Gill: For the second offence it's \$500, up to \$5,000. If it's a repeat offender and people see that this is a habit, then the judge can have even the first offence be up to \$5,000. So I think those are a deterrent in themselves.

The Chair: Mr Kwinter, did you want to clarify something?

Mr Kwinter: I just want to get a clarification of the answer I just got. He said that the act specifically says it's the driver and not the owner. I've read it again just now, and it says both the owner and the driver are subject to penalties—both of them—which gets back to the original question I had: how do you do that?

1050

The Chair: I'm going to let Mr Kormos, who is very eager to apply his legal skills to this—

Mr Kormos: No, no, I've got to move on. I've got other committees to go to this morning.

Laughter.

Mr Kormos: Well, I've got public accounts, I've got House, I've got here.

Look, the denial of a validation sticker is not perceived as a penalty. It is a means whereby the province can collect. You show up there, they do the printout and you owe 400 bucks or 500 bucks. No money, no sticker; end of story. So it's not a penalty. I'm sure the Highway Traffic Act never contemplated it as a penalty. It's a consequence, but it's designed to facilitate payment. That's number one.

Number two, let's understand what's going on here. I think the bill, quite frankly, is fine in terms of what you want to achieve. The driver of a vehicle, if convicted, cannot renew the licence plate sticker on his vehicles, on vehicles registered in his or her name. If I'm driving Spina's Cadillac and I commit the offence, Spina gets a renewal sticker on his Cadillac; I can't renew the sticker on my 1994 Chevy S-10 pickup. If I am an owner who is convicted as a result of 40.1—John Smith, the owner, can't renew the sticker on John Smith's vehicles until John Smith, the owner who has been convicted, puts some cash on the dash, as they say. If I am the lessee and Raminder Gill is leasing my car and committing an offence, but I as the lessee am not convicted under 40.1, it's Raminder Gill who can't renew the sticker on his Lincoln Town Car. It's not the lessee who can't renew the sticker on my 1991 very old Buick. Do you understand what I'm saying?

You don't have a problem here because it depends upon a conviction under 40.1, and the conviction doesn't attach to the vehicle—notwithstanding what those SOBs in the insurance industry do; the conviction attaches to the individual who is convicted, be it corporate or non-corporate, and his or her vehicles registered in his or her name.

So there's no problem here. If a lessee is convicted, they have to be convicted as a result of knowingly permitting. In that case, that lessee should have to pay up, and if they don't pay up, let them pull the stickers or not renew the stickers. If an owner is an innocent owner with a driver convicted, that owner doesn't have a conviction under 40.1 and therefore won't fall under the denial of renewal of a validation sticker. There's no problem. Don't create problems where you don't have them. It's those poor legitimate cabbies who have problems.

The Chair: Thank you, Mr Kormos. One final comment, Mr Bisson.

Mr Bisson: I'm not sure I agree entirely with where he's going. I should, but I'm not entirely agreeing.

In any event, if we vote against subsection (1), basically you can't withdraw a sticker from anybody, correct? If we vote down subsection (1) and it's struck from the bill, then the refusal to issue the sticker to whomever is not an issue.

Mr Hanson: That is correct. The current subsections 7(10) and 7(11) of the Highway Traffic Act, which actually address the issue of permit denial and permit suspension for unpaid parking infractions, would still be there. So nothing would change. The current regime would stay in place.

The Chair: I'm going to allow legislative counsel to have the final word.

Mr Bisson: Are you imposing time limits on clause by clause? Since when did we get into that?

The Chair: We've been hearing the same arguments over the last 10 minutes.

Mr Bisson: No, you're not hearing the arguments. We still haven't dealt with what we need to do to fix this. In my view, we still have a problem, and I just want to

clarify that. Basically, the same regime that's in place now stays in place. If the owner of a vehicle gets the fine, you cannot withhold the sticker, right?

Mr Hanson: That's right.

Mr Bisson: OK, but you can suspend the person's driver's licence?

Mr Hanson: Correct.

Mr Bisson: So my question is, if we don't amend subsection 40.1(1), if a rental company has their vehicle out there, would it be that the only person who is given the suspension is the driver? Or do we have to change that at the end there, where it says, third line down, "owner or lessor of a motor vehicle shall," to insert the word "knowingly" in order to exempt all those others so that the rental company or the lessor is not caught up?

Mr Hanson: That's correct.

Mr Bisson: That's what we should be doing, or striking part of that subsection in order to make sure we don't get caught up in getting rental companies and lessors caught up.

Mr Hanson: Correct.

Mr Wood: I just wanted to respond to one point that Mr Kormos raised and perhaps the ministry counsel could also clarify this. In the present subsection 40.1(1), the new subsection 40.1(1) of the Highway Traffic Act, as set out in section 2 of this bill, it would seem that the owner or a lessee of a motor vehicle would be guilty of the offence for permitting the driver to engage in that conduct, whether or not the owner or lessee permitted that knowingly. It would seem to be an offence more of strict liability if the owner or lessee allowed it to happen. Therefore, if Mr Kormos wanted to make a motion to restrict that liability, then it would seem to me the way to do it would be to insert the word "knowingly" so that it would read, "no owner or lessee of a motor vehicle shall knowingly permit a driver to" etc.

Mr Bisson: That's the point I'm making.

Mr Kormos: Legislative counsel's suggestion is not inappropriate. In my view, "permit" logically implies giving permission to do the following things: giving permission to operate that vehicle for the purposes proscribed. But you've then got to understand that "knowingly permit" sets the bar a little higher because you incorporate some intent, as I am told, into absolute offences. These are absolute offences, right, under of the Highway Traffic Act? Yes, I think they are. So again, "knowingly" would clarify that, but it also would raise the bar and create two words where one word might suffice. You might want to take a serious look at other statutes and see whether "permit" in and of itself is used. I give you permission to drive my car, that's one thing, but if I give you permission to drive my car to run illegal booze across the border, that's another thing. Here it's not just permission to drive your car, which, let's say, a lessor would have as a right, but it's permission to do the following things: to convey passengers anywhere in Ontario for compensation. So Mr Gill, I would urge you—and I appreciate this isn't the result you wanted—but maybe even in the next half-hour somebody could

take a look at some precedent around the use of the word “permit” as compared to “knowingly permit.” To me, “permit” creates the offences because it’s “permit driving the vehicle and carrying passengers for compensation.” That’s what the permission is. So it implies “knowingly.” But you do what you want because it’s your bill and I’ve got to go.

The Chair: Any further comment?

Mr Bisson: I saw the Cadillac.

The Chair: For the record, I’m not sure that there are too many things that Mr Kormos and I have in common, but we both own an old S-10 Chevy and also an old Buick.

Mr Kormos: Your third vehicle?

Mr Bisson: I just have to ask Mr Gill a question. So you are asking us to vote against that particular subsection (1); I understand your logic. Was it your intention to not remove somebody’s sticker altogether, or would you rather have just removed the sticker of the person who created the offence?

Mr Gill: I would rather remove the sticker of the person who committed the offence. I would rather go that far.

Mr Bisson: So as the drafter of the bill, why then would you not amend that subsection? In other words, you cannot renew your sticker if you don’t pay your fine. If you want all that to stay in place, for just the offender, rather than vote against an entire subsection, leave it blank. Why not come back with something that basically says that the rental companies are not on the hook and all those other examples we used this morning, so that clearly it’s only the offender who would be subject to that refusal of the sticker. I’d be prepared to support that, if that’s where you want to go.

1100

Mr Gill: That’s where I want to go, but I’m not sure what the wording is going to be. I don’t want to be delaying the process so much that we don’t come to an agreement.

Mr Bisson: I just ask leg counsel, would it be very difficult to put something together that gives us just that?

The Chair: If you wanted to draft the motion, counsel could do it. We would have to recess for 15 minutes.

Mr Bisson: I’m just trying to help you. I was uncomfortable voting against the entire subsection, because it kills that altogether. I’m not sure that’s what you want.

The Chair: I’m open to a suggestion.

Mr Gill: Could we have an order to have further discussion on the other clauses and come back, then?

Mr Bisson: By unanimous consent, we can do that, yes. I’d be willing to do that.

The Chair: Are you asking for unanimous consent?

Mr Gill: I’m asking for unanimous consent to be able to do that.

The Chair: OK. Do we have unanimous consent to postpone section 1 of the bill, and then we’ll go into section 2 in the meantime while leg counsel drafts the amendment? Agreed? Agreed. Section 1 is deferred.

We shall now go to section 2. Can I have a mover for section 2? Mr Gill, will you move section 2 of the bill?

Mr Gill: I move section 2 of the bill, and later I have an amendment.

The Chair: I’ll ask for that.

Mr Bisson: Does he want to move his amendment before? Is that what you’d rather do?

Mr Gill: Yes.

The Chair: Before we get into the amendment, I ask for any comments, questions or amendments. So do you want to move your first amendment now?

Mr Bisson: I have a question before that amendment. I’m back to 40.1 again. Let’s say subsection (1) was not to pass. We want to fix the situation so that we don’t make it possible for anybody but the offender to be given a fine under this bill. In your view, as the counsel for MTO, after the third line in 40.1, if we were to put in “motor vehicle shall knowingly permit”—this whole argument that Mr Kormos has raised—does that keep the rental companies and the lease companies off the hook?

Mr Hanson: As long as they were truly unknowing.

Mr Bisson: That’s the whole spectre that Mr Kormos raised. What do we need to do in that section, in your view, to make sure that we don’t end up putting them on the hook for—just making sure it’s the offender? As I read that, it says, “Unless all of the conditions set out in subsection (2) are met, no driver of a motor vehicle shall, and no owner or lessee of a motor vehicle shall permit a driver to.” As I read that, it basically means that if somebody borrows my car and I give them permission to take the car, or the rental company rents the car, they could be held liable, unless I’m mistaken.

Mr Hanson: I would like to discuss this with leg counsel in terms of the actual formal drafting technique that would accomplish that.

Mr Bisson: But as written now, is it a problem? Am I reading that correctly?

The Chair: What are you reading?

Mr Bisson: In subsection 40.1(1) it says, “Unless all of the conditions set out in subsection (2) are met...”

The Chair: From a perspective of order, that is a discussion once that amendment has been introduced.

Mr Bisson: Well, there’s no amendment right now.

The Chair: I understand that.

Mr Bisson: The amendment that Mr Gill wants to give is under subsection (2). I’m still on (1), and we’re having a discussion on subsection 2(1) of the bill. So I’m in order. I think leg counsel wants to say something and that will probably—

The Chair: What I’m trying to tell you is, from a procedural perspective, you are already into the debate on the proposed amendment.

Mr Bisson: No, no.

The Chair: Well, even on that section. The point is, we haven’t even got to that.

Leg counsel, proceed.

Mr Wood: I get the impression that Mr Bisson wants to move a motion to amend the new 40.1(1) of the Highway Traffic Act.

Mr Bisson: That's right, but before I move it, I want to know if I've got a problem. That's what I'm trying to get here. Is it an issue? That's what I'm asking both of you as counsels.

Mr Wood: I could draft something. I think we'd need a recess to examine it, and the clerk could tell us whether it's in order. My understanding is that it is in order to bring a motion to amend 40.1(1) of the Highway Traffic Act.

Mr Bisson: Yes, I understand that. I know what my rights are under the standing order. My question is, as I read that, does that mean that the owner of a vehicle or rental company could be held liable? That was my question, and I thought I heard a yes. And if that's a yes, then we need to fix that.

Mr Wood: My understanding is, yes, both the driver and the owner or lessee of a motor vehicle is liable for an offence.

Mr Bisson: That's right. So we would need yet another amendment to your bill that you didn't provide us with in order to make sure we don't go where you don't want to go. So yes, I would appreciate it if you could take a look at that as an amendment that Mr Gill or I could put forward so we make sure we don't end up down that road.

Mr Gill: Do you mean adding the word "knowingly"?

Mr Bisson: Well, is it "knowingly" or do we just have to strike out "owner or lessee"?

The Chair: Can I suggest that we take a 10-minute recess? You can discuss it directly with counsel and Mr Gill and bring forward whatever amendment you choose to. Ten minutes, maximum.

The committee recessed from 1106 to 1123.

The Chair: OK. This committee will come back to order, with the grace period. We are in the discussion of section 2, without any amendments having been introduced.

Mr Bisson: I can be helpful, Chair. Here's what we're going to do. As I understand it, we can revert back to section 1 and vote on it because we've decided we don't have to remove that section. We can fix the problem of the ability to collect the fine by withholding the sticker by making amendments to section 2. So we can go back to 1, deal with 1, and then we can get into 2.

The Chair: Do I have unanimous consent to refer back to section 1? Agreed.

Are there any amendments or comments to section 1 of this bill? Hearing none, all in favour of carrying section 1? Carried unanimously.

We now move to section 2. Are there any comments, questions or amendments to section 2 of the bill?

Mr Gill: I move that section 2, subsection 40.1(1) of the Highway Traffic Act, as set out in section 2 of the bill, be amended by striking out "shall permit" and substituting "shall knowingly permit."

The Chair: Any discussion on that amendment?

Mr Bisson: I need clarification. I thought you wanted to rewrite 1. You don't think it's necessary now?

Mr Wood: Upon consultation with the ministry counsel, we thought it wasn't necessary. This makes it clear that the driver of the motor vehicle can be convicted on the basis of strict liability, but the owner or lessee of the motor vehicle is only convicted on the basis of knowingly permitting it.

Mr Bisson: It won't interfere with subsection (2) of section 2? Remember, we were talking about the regulatory—

Mr Wood: It doesn't interfere with any other motion.

Mr Bisson: That will be fine.

Mr Wood: I do point out that there is another motion on 40.1(1) of the Highway Traffic Act.

Mr Bisson: But it will all be consistent? It's not a problem?

Mr Wood: Yes. It doesn't conflict with the other motion.

Mr Bisson: Fine.

The Chair: Any further comment on that amendment? All in favour? Opposed? Carried.

Any further amendments to section 2?

Mr Gill: I move that subsection 40.1(1) of the Highway Traffic Act, as set out in section 2 of the bill, be amended by striking out "the conditions set out in subsection (2)" and substituting "the conditions set out in a regulation made under clause 2(a)."

The Chair: Any questions or discussion on that proposed amendment?

Mr Bisson: Just if you can follow me, leg counsel, the amendment says, second line down, "be amended by striking out 'the conditions set out in subsection (2).'" I go to section 2 of the bill and it says, "The conditions mentioned in subsection (1)." Am I in the wrong part of the bill?

Mr Wood: No, that is correct. This particular motion that has just been moved has to go together with another motion which rewrites 40.1(2) of the Highway Traffic Act.

Mr Bisson: I understand. But when I read the bill in a drafted form, 40.1(2) says, "the conditions mentioned in subsection (1)." Follow me? As I read the amendment, you're saying, "The Highway Traffic Act, as set out in section 2 of the bill, be amended by striking out 'the conditions set out in subsection (2).'" It doesn't say that in the bill, so I'm just wondering why that is. It says (1).

Mr Wood: The present 40.1(1) of the bill says, "unless all of the conditions set out in subsection (2) are met."

Mr Bisson: Let me show you what I'm talking about, unless I've got bad grammar.

Interjections.

The Chair: Is there any further discussion on this proposed amendment?

Mr Bisson: I just have a question. What we're going to be saying is, "the conditions set out in regulation." It seems to me that we're fairly explicit in the bill in what we want to do. My first question is, if we set it out in regulation, will it not give the minister the ability to make changes that may not be the changes that you want as the

drafter? Why not just leave it in the bill? Why do it by way of regulation?

Mr Gill: As I understand it, the ministry needs the flexibility in case some other conditions come up in terms of carpooling or any other type of vehicles, to give them that flexibility. I thought that we could work with the ministry.

Mr Bisson: I guess my problem is this: I'm not a big fan of giving the minister all kinds of authority to do things by way of regulation that were not contemplated by the drafter of a bill. If we accept your proposal on this amendment, it will give the minister—your minister, or my minister in the next government—the ability to do whatever by way of regulation, provided it doesn't break the standing orders under the regs committee.

If I were the Minister of Transportation and I decided that I wanted to enlarge the scope of this bill, restrict or whatever, I'd be able to do it by regulation now, right?

So my question to Mr Gill is, are you sure you want to give a current minister or a future minister the ability to gut or strengthen your bill?

Mr Gill: I don't have any problem with that. I think it's fine. They have many other authorities under many other regulations, so I think we can live with that.

1130

Mr Bisson: All right, I'll vote against that section. It's as simple as that.

The Chair: Any further discussion on this amendment?

Mr Bisson: Recorded vote.

Ayes

Arnott, Beaubien, Gill, Kwinter, O'Toole, Phillips.

Nays

Bisson.

The Chair: The amendment is carried.

Any additional amendments to section 2 of the bill?

Mr Gill: I move that subsections 40.1(2) and (3) of the Highway Traffic Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Minister's regulations

“(2) The Minister may make regulations,

“(a) specifying conditions for the purpose of subsection (1);

“(b) exempting any motor vehicle or class of motor vehicle from the requirements of this section;

“(c) exempting any person or class of persons from the requirements of this section.

“Class

“(2.1) A class mentioned in clause (2)(b) or (c) may be defined with respect to any attribute, characteristic or time or place limitation or combination of those items and may be defined to consist of or to include or exclude any specified member, whether or not with the same attributes or characteristics or time or place limitations.

“Exception

“(3) This section does not apply to a public vehicle, as defined in the Public Vehicles Act, to which that Act applies.”

The Chair: Any comment?

Mr Bisson: Now you're into why I voted against your giving the minister the ability to set the regulation. As the drafter of the bill, what you've done is, because the rules say that if you give the minister the rules to set regulations under an act, we have to define what authority he or she has. We are now, by way of this section, giving the minister the authority to gut your bill. So technically now, what we have is a bill that's passed, it goes to your Minister of Transportation, your minister may choose to keep the intent of your bill alive or he or she may choose not to, or a future minister of the crown in a future government, which could be as soon as next month, could come in and say, “I don't like this bill, and by way of regulation, I'm null and voiding the bill.” Why would you have done that?

Mr Kwinter: I'd like to just speak to this amendment, which I think is a good idea. First of all, I don't think you can gut a bill by regulation. I just want to get a clarification from the proposer of this bill. All of us on this committee I'm sure have been receiving correspondence and communication from people who fear that this is going to prevent them from doing all sorts of things that I don't think were contemplated in the bill, whether it be car pools or dropping people off somewhere so they can do something else, and suggesting that they have to have a licence to do that. The opportunities and the situations are so vast that it would be virtually impossible to limit them all or schedule them in a bill. So it would seem to me—and I just want to get clarification that this is the case—that the purpose of this is to allow the minister to make regulations, literally on a case-by-case basis, to accommodate those people who are in fact not doing any of the things that are contemplated by the mover of this bill. Is that a reasonable explanation?

Mr Gill: That is precisely the intent, Mr Kwinter, that the minister should have some flexibility, that as the conditions come up, there are some exceptions needed. So you're quite right.

Mr John O'Toole (Durham): I just want to be clear. We supported the bill in the House based on the general and broader discussion of the conveyance of people for money, and licensing, and there are some penalty things we've dealt with. Nothing in the regulations we're allowing to be created could contravene the intent of the bill. Isn't that right? The regulations can't set about to dismantle the intent of the legislation, which is to prohibit the illegal movement of people for commercial purposes. Isn't that it?

Mr Hanson: That's correct.

The Chair: You're all right, Mr O'Toole?

Mr O'Toole: That's great, thanks.

Mr Bisson: I'm going to ask leg counsel or the ministry the question. By way of the subsection, we're saying, first of all, under 40.1, that we're giving the minister the

ability to define by way of regulation much of how this bill works. We're saying to specify conditions for subsection (1)—right?—and that would mean to say the conditions of what? Who can get charged, for example?

Mr Hanson: Who could get charged or under what circumstances, correct.

Mr Bisson: That's right. Who can get charged and under what circumstances? The reason we amended the bill was to specifically home in just on the driver. As I read it, we're widening this out by regulation. Am I correct?

Mr O'Toole: It could be by class.

Mr Bisson: I'm going to get to that in a second. The second thing is, "exempting any motor vehicle or class of motor vehicle from the requirements of this section." I agree with you. Your intent is to say carpools, but that could mean a whole bunch of things, right?

Mr Hanson: Correct.

Mr Bisson: It gives the minister whacks of power to do what he or she decides to do and then exempt any person or class of person from the requirements of this section. That means I can decide that I want to exempt whomever, if I was minister, from being charged under this bill, including the driver, if I put that in my regulation.

Mr Hanson: That is correct.

Mr Bisson: Hence, why in heck are we giving the minister that power? If I was the drafter of the bill and I wanted to make sure the bill survives as drafted, if the minister wants to make those kinds of changes to gut my bill, let he or she come to the Legislature and get the support of the majority of legislators to do that.

I think, as the drafter of the bill, Mr Gill, you don't want to give the minister the regulatory power because this minister or future ministers may decide this is a bad bill and gut you by regulation. I will vote against this section as well on that basis. I will vote for your bill, but I will vote in opposition to giving the regulation. Quite frankly, I think you do not know what you're asking for and you're going to be giving a minister something you don't want to give him or her.

Mr Gill: I thank the member for his concerns. I think we should move on for the sake of time.

The Chair: Any other comments on this proposed amendment?

Mr Bisson: Recorded vote.

Ayes

Arnott, Beaubien, Gill, Kwinter, O'Toole, Phillips.

Nays

Bisson.

The Chair: Are there any other amendments to section 2 of the bill?

Mr Gill: I move that subsection 40.1(5) of the Highway Traffic Act, as set out in section 2 of the bill, be

amended by striking out "the conditions set out in subsection (2)" and substituting "the conditions set out in a regulation made under clause (2)(a)."

My explanation is the same as we have already discussed, giving the minister powers under regulation rather than setting it out here.

The Chair: Any comments?

Mr Bisson: For the sake of consistency, under this section I just want to make the same point. If you're the drafter of a bill—and I respect you're trying to deal with the scoopers, and we all agree; we think that's a good thing. But again we're back to where we were. If I'm Minister of Transportation in the next government and I decide I want to do whatever to this bill—

Mr Gill: Hypothetical.

Mr Bisson: I'm being hypothetical. I could be.

The Chair: Where's Gilles Pouliot when you need him?

Mr Bisson: My colleague—anyway, let's not go there—the esteemed former Minister of Transportation.

My point is, I am going to vote against your amendment to this section for the following reason: I believe that you don't want to give the minister these kinds of regulatory powers because the minister could decide to basically null and void this bill by regulation or he can decide to say, "I'm going to include those classes of people, including car rental companies, by way of regulation." He can do all kinds of things that both industry and consumers would not like. Would it not be the first time that ministers have done things the public doesn't like, or is it, quite frankly, not a common sense move? I will vote against this section.

The Chair: Any further comment on this amendment?

Mr Gill: Point well taken, including the so-called social contract. I do understand that governments sometimes come in and try to undo everything. I understand your point. Thank you.

The Chair: Any further comment on this amendment?

Mr Bisson: Recorded vote, please.

Ayes

Arnott, Beaubien, Gill, Kwinter, O'Toole, Phillips.

Nays

Bisson.

The Chair: Carried.

Are there any further amendments to section 2 of the bill? Seeing none, shall section 2, as amended, carry?

Mr Bisson: Now I've got a real problem. Part of it I agree with and part I don't.

1140

The Chair: You'll have to make a decision. All in favour of section 2, as amended? Any opposed? Carried.

Mr Bisson: You should have asked for a recorded vote. You would have put me on the spot.

The Chair: That's up to you. I am just the Chair.

Do I have a mover for section 3 of the bill?

Mr Gill: I move section 3.

The Chair: Are there any comments, questions or amendments to section 3? Mr Gill?

Mr Bisson: Just a quick question.

The Chair: Mr Gill has the floor.

Mr Bisson: Oh, I thought you were asking Gilles. That's what I heard.

Mr Gill: Pretty close.

Mr Bisson: I heard "Gilles." Sorry.

The Chair: I know, Gilles, but this one is Gill.

Mr Gill: I move that section 3 be struck out and the following substituted. Now, let me point out, gentlemen, that that is not precisely what it reads, so listen carefully. Let me read it again. I move that section 3 be struck out and the following substituted:

"Commencement

"3. The Act comes into force on a day within 180 days by proclamation of the Lieutenant Governor."

I'm setting a time limit on it so that it's not open.

Mr O'Toole: Yes, otherwise I couldn't support it.

The Chair: Is there any comment to this amendment?

Mr Bisson: I want to hear that again.

The Chair: All right, I'll ask leg counsel to read it again and then we'll go to Mr Kwinter.

Mr Wood: I just have to make a comment on this. It is important to specify what the 180-day time period runs from. Probably what you want to say is something like, "This act comes into force on a day to be named by proclamation of the Lieutenant Governor within 180 days of the day on which this act receives royal assent."

Mr Gill: Well said. Precisely. Should we rewrite it?

Mr Wood: Yes, that would be my recommendation.

The Chair: Hang on. How are you going to correct this, then? Do you want to correct it based on the advice of counsel, Mr Gill?

Mr Gill: Yes, Mr Chair.

The Chair: So you will withdraw that amendment as you read it into the record and it will be re-entered into the record as per counsel's advice.

Mr Gill: I agree. The intent is still exactly the same; it's just a different wording. So I withdraw this one, awaiting the exact wording which I will be reading into the record.

Mr Bisson: Chair, at this point we're at the end of the bill. I've got to go for a division on something. We're running out of time.

The Chair: We have Mr Kwinter who wants to speak to this.

Mr Bisson: But I take it we're basically just at the vote for the bill. I'm referring to the House. I've got to run.

Mr Kwinter: I just wanted to clarify. There are two variables. One is, when do you get royal assent, which could be at any time or it could never happen? Then, once it gets royal assent, when does it get proclaimed? What you've really done by adding six months from the time it gets royal assent until the time it gets proclaimed,

you may be effectively killing this bill. That's the concern I have.

Mr O'Toole: I, along with Mr Kwinter, agree that it's become quite transparent when this thing is going to actually happen. We've got some regulatory sections here that would be proclaimed only when the regulations are in effect anyway, because they would do those after proclaiming, potentially. I just think a straightforward time limit is within 180 days of being passed by the Legislature, because through various mechanisms they can delay it receiving royal assent. Do you understand? In other words, if it doesn't get royal assent, it never becomes law.

Mr Kwinter: Mr Chair, on a point of information: can you in fact pass a bill without royal assent? Can you put a time limit saying, "whenever it gets passed by the House"?

The Chair: My understanding of the standing orders is that when the bill passes third reading in the House, that is one item. When it receives royal assent is strictly a distinct item, and that is when it receives royal assent obviously from the Lieutenant Governor. So the question is, do you want the 180 days, as you are proposing, to be from the passing of the third reading of the bill or from royal assent, when it is given by the LG? That's the point.

Mr O'Toole: If I could finish my question, there are many bills that are never given royal assent. It passed the House but there has never been assent on it.

The Chair: We understand that. So the question to Mr Gill—and I think Mr Kwinter agrees—is that he has to pick the time from which that 180 days begins.

Mr Gill: Mr Chair, on a point of clarification: I don't think I control or the House controls the timing of the royal assent after passing third reading. So I don't know if we can even—

The Chair: We understand that. So the question is, do you want the 180 days from the third reading of the bill passing in the House or from royal assent? Those are two distinct dates.

Mr Kwinter: If I can just be helpful, you can't have a law unless you have royal assent. So if you put 180 days from the time it's passed in the House, without royal assent, it's meaningless. The 180 days will come and pass and nothing is going to happen because you haven't got royal assent.

The Chair: We understand that. Hence my question, which is maybe rhetorical.

Mr Gill: I have a simpler amendment, perhaps—I know leg counsel is drafting one—and it's open for discussion quickly. The gist of it is that this act comes into force 180 days from the day it receives royal assent.

Mr Wood: Two points. First, I have to say that procedure supports what Mr Kwinter said, that the bill does not take effect until it receives royal assent. Royal assent is a formality. It's never withheld once the House passes a bill. The second point is, it is much more workable to do what Mr Gill has just suggested, to say that the bill comes into force 180 days after the date on which it

receives royal assent. That makes it very clean as to exactly what day you mean.

The Chair: OK, so you have withdrawn your first amendment.

Mr Bisson: Just a question to leg counsel. You're still left with the spectre that the government could decide not to bring the bill to the LG for royal assent, technically, right?

Mr Wood: Technically, the House could decide not to pass the bill on third reading.

Mr Bisson: No, I'm assuming the bill passes third reading. Technically, we're still with the problem that if the government decides not to bring the bill to the LG for royal assent—right?

Mr Wood: To be sure, I'd have to consult on this, but my understanding is that once the House gives third reading to a bill, it's a formality that the bill receive royal assent, because the Lieutenant Governor can only act on the advice of the assembly.

Mr Bisson: But that's my question. If the Premier chooses, the government could have a bill pass third reading but never proclaim the bill.

Mr Wood: Subject to the caveat for a formal opinion—I'd want to hear a formal opinion from, in this case, the constitutional law branch of the Ministry of the Attorney General—my understanding is—

Mr Bisson: Can you send me a little note on that after? I'd just be curious.

Mr Wood: —my understanding is that the Lieutenant Governor acts on the recommendation of the assembly, not the government.

Mr Bisson: So the difference would be that the government can choose not to proclaim it after it's given royal assent.

Mr Wood: No, my understanding is that the government could not withhold, could not stop the Lieutenant Governor from giving royal assent once the Legislative Assembly passes the bill.

Mr Bisson: This is an issue outside the bill, so I'll raise it with you after.

Mr Phillips: We only have one choice, and that is the time after royal assent; otherwise I think the bill would be ruled out of order. I do not believe you can order it.

The other thing I would say is, the fact is, there have been bills passed at third reading that have never been proclaimed through royal assent, because the government chooses not to. I think research would show that. My memory is not that good, but I think there was a spills bill that wasn't ever proclaimed. It would be unusual, but if the government chooses to simply not take it for royal assent—I think you would probably find 10 bills around here that have been passed for third reading and have never got royal assent.

I don't think we have any choice, in any event. I am not a lawyer, as they say, but I don't think the Legislature can ever pass a bill saying, "This will become law regardless of whether it ever gets royal assent." That's not possible.

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The Chair: I'll go to Mr Wood before I go to Mr Kwinter, if that's all right.

Mr Kwinter: Sure.

Mr Wood: On a point of information, what happened with the spills bill was that it did receive royal assent, as far as I know, but it was to come into force on proclamation and it was never proclaimed. You are correct that in order for an act to exist, it must receive royal assent, but the flexibility comes in whether the Lieutenant Governor proclaims it in force if there is a commencement provision that says it comes into force only on proclamation.

Mr Kwinter: I just want to get clarification from the proponent of this bill: is your amendment suggesting it will happen 180 days from royal assent or does it say "up to 180 days," so it could get proclaimed two days or three days after royal assent?

Mr Gill: My proposal is that this act come into force within 180 days from when it receives royal assent. So 180 is the maximum; it could come into effect next week.

Mr Kwinter: OK.

The Chair: Is there any further discussion on that amendment? We need the specific wording of the amendment to be read into the record. Mr Wood, you wanted to comment?

Mr Wood: As I commented earlier, it is much more workable to say the bill comes into force 180 days after receiving royal assent; not give a spectrum of 180 days but specify exactly the 180th day after receiving royal assent.

Mr Gill: Good point. Thank you.

The Chair: Is there a reason for that? I'm asking the question because, as Mr Kwinter indicated, you're specifying that it can only be proclaimed on the 180th day as opposed to somewhere in between. Is that what you're seeking to achieve here?

Mr Wood: Actually what we would be doing is specifying an exact day rather than allowing the Lieutenant Governor the discretion of when to proclaim the bill. On the spot, I don't have the resources to give a formal opinion as to whether you can fetter the discretion of the Lieutenant Governor in proclaiming a bill. It is much cleaner and more explicit to state an exact day.

The Chair: I don't think what we're doing here is limiting the Lieutenant Governor's decision as to when it will be proclaimed; rather, it would come into force within 180 days of royal assent. That's the key here.

Mr Wood: What day would that be, if you say "within 180 days"?

The Chair: For the sake of discussion, if I understand this correctly, if royal assent were given on June 1, 2003, then the bill would come into force up to 180 days after that. But I understand your point is that once it is given royal assent, it does come into force. Is that your point?

Mr Wood: No. My point is that for a number of reasons you have to know exactly what day a bill comes into force. If you say it comes into force within 180 days

of receiving royal assent, you haven't answered the question of exactly what day.

The Chair: OK. So you're saying that 180 days from royal assent specifies the date it will take effect?

Mr Wood: That's right.

The Chair: Thank you.

Mr O'Toole: Mr Chair, you're helping me understand. I trust that your advice is—

The Chair: He clarified it in my mind.

Mr O'Toole: When I look at "Commencement," the section we're dealing with, "This act comes into force on the day it receives royal assent." I put to you, what day is that? I have no idea when that is. It could be four years. What if there's a change in government and they decide to just stack the bill? It's not likely to happen, but—

Mr Wood: It is true that right now we don't know the day on which the bill receives royal assent, but when it receives royal assent we will know exactly what that day will be.

Mr O'Toole: That's part of the question. We will know when it receives royal assent and that could be in a day, a month, a year. It could be delayed; it could never receive it. His 180 days doesn't even start counting until that day.

The Chair: Until royal assent takes place, that's correct, as Mr Wood proposed.

Mr O'Toole: What I'm saying is—and I'm not questioning you and your interpretation—can we not say this bill will come into force no later than January 1, 2004?

The Chair: If I can reiterate Mr Wood's advice earlier, you cannot restrict the Lieutenant Governor as to the date he must give royal assent. Is that correct, Mr Wood? You can't restrict the Lieutenant Governor as to when he or she chooses to give royal assent?

Mr Wood: That is my understanding, but I have to preface it with the caveat that you're asking me a complicated question on the spot. To give a firm answer, I'd have to consult more. But that is my understanding.

Mr Kwinter: I would ask Mr Wood, while he's doing his investigation, if he could find out—I can't recall an incident where a bill specified the time limit when it must be proclaimed. I don't know if you are allowed to do that.

Mr Wood: That is what I was saying. I don't think you can specify a time limit for proclamation, but you can specify a day for coming into force.

The Chair: Once it is proclaimed.

Mr Gill: I move that section 3 be struck out and the following substituted:

"Commencement

"This act comes into force 180 days from when it receives royal assent."

The Chair: Any further discussion on that amendment?

Mr Phillips: Maybe I wasn't listening carefully; I just thought you wanted to give 180 days, not that you wanted it to be 180 days. I thought you would prefer this to be enacted as quickly as possible. I thought we were moving to deal with this issue. But as I understand the

motion now, it would be at least six months before any action would be taken.

The Chair: From royal assent, as the amendment has been introduced.

Mr Gill: Mr Chair, Mr Phillips is quite right in his interpretation. The ministry actually wanted nine months because of some computer programming they have to change. If this becomes law, it does take into account several changes to the computer systems and all, and they wanted nine months. Even though I wanted it to be implemented on the same day it received royal assent, practically it was not possible. So we compromised on the six-month date.

Mr Phillips: I should have been listening more carefully, because I thought you were just giving flexibility. I thought the intent was, let's get this thing done as soon as we possibly can, but in case they can't do it let's give them at least 180 days. I had been of the opinion that this thing was a crisis with people going broke. We've dealt with this at record speed; we've bent over backwards. Frankly, I think the bill was badly drafted, and we've accepted all these things to try to accommodate you. Now I find that the ministry, on a kind of leisurely basis, is going to want at least six months before they implement it. I now feel a little like I've been had. The people who have been affected by this are losing their businesses and, as I say, we've tried to deal with this in seven days. Now, by our own action, it will be a minimum of six months. What are we doing?

Mr Gill: Chair, may I ask the ministry to perhaps comment on that? My intention, Mr Phillips, is even more eager. I agree with you that it should be implemented right away. I agree with you, but let's hear from the ministry what their handicap is.

The Chair: Could I interject for a moment here? Probably within three minutes we are going to have a division bell. If this is not concluded, I will (a) need unanimous consent to continue during the division bells, and (b), if we are not done by that point this will be concluded on Thursday next week.

Mr O'Toole: Why can't we sit?

The Chair: Because the duties of the House are suspended as of 1:30.

You name, sir?

Mr Jim Whitestone: I'm Jim Whitestone, director of the transportation policy branch, Ministry of Transportation.

The experience with other similar changes to our computer systems at MTO is that there is a physical limitation in terms of the time involved in implementing these changes. Our experience has been that it takes six months to include these types of changes. There's a physical limitation we're bumping up against. To specify that it happen in less than six months would present some significant challenges in terms of implementation.

The Chair: Thank you. Any further discussion?

Mr Phillips: Could I have a recorded vote, please?

The Chair: Sorry. Could we clarify and have the amendment reread for the purposes of everybody's understanding?

Mr Gill: Apparently the wording, based on leg counsel, has changed slightly, if I may add that to the record for members. Let me preface this by saying that this because of technical limitations in the ministry; that's the only reason I'm delaying it. Otherwise, I'd want it enacted right away.

The Chair: I'll stop you right now because I need unanimous consent to continue while these bells are ringing.

Mr Phillips: I'd like to get to the vote, Mr Chair.

Mr Gill: I move that section 3 be struck out and the following substituted:

"This act comes into force on the day that is 180 days from the day on which it receives royal assent."

The Chair: Any further discussion on that amendment?

Mr Phillips: Recorded vote, please.

The Chair: Recorded vote.

Ayes

Arnott, Beaubien, Gill, O'Toole.

Nays

Kwinter, Phillips.

The Chair: The amendment is carried.

Shall section 3, as amended, carry? Carried.

Section 4: would you please move section 4 of the bill.

Mr Gill: I move section 4 of the bill.

The Chair: Are there any amendments or discussion on section 4 of the bill?

Seeing none, all in favour of carrying section 4? Opposed? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 2, as amended, carry? Carried.

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

That concludes our business for today.

The committee adjourned at 1202.

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