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Monday 20 November 2006

Lundi 20 novembre 2006

Speaker
Honourable Michael A. Brown

Président
L'honorable Michael A. Brown

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OF ONTARIO

Monday 20 November 2006

ASSEMBLÉE LÉGISLATIVE
DE L'ONTARIO

Lundi 20 novembre 2006

The House met at 1845.

ORDERS OF THE DAY

REGULATORY
MODERNIZATION ACT, 2006
LOI DE 2006 SUR LA MODERNISATION
DE LA RÉGLEMENTATION

Resuming the debate adjourned on November 14, 2006, on the motion for second reading of Bill 69, An Act to allow for information sharing about regulated organizations to improve efficiency in the administration and enforcement of regulatory legislation and to make consequential amendments to other Acts / Projet de loi 69, Loi permettant l'échange de renseignements sur les organismes réglementés afin de rendre plus efficaces l'application et l'exécution de la législation de nature réglementaire et apportant des modifications corrélatives à d'autres lois.

The Acting Speaker (Mr. Michael Prue): It is my understanding that, in the rotation, it is now the order for the New Democratic Party, the third party. The member for Toronto–Danforth.

Applause.

Mr. Peter Tabuns (Toronto–Danforth): My thanks to Mr. Levac for his generous and gracious applause.

My caucus colleagues have already had an opportunity to speak about Bill 69 and express a number of their concerns. I can see that they certainly enthused many members on the government benches with their comments.

My comment is that, in general, the idea of information sharing makes a lot of sense—no question that when you break down silos between different departments, when you have people share information that is of concern to multiple ministries or multiple authorities, then there is some advantage to government. In fact, there will be some positive outcomes if this bill, in probably some amended form, does allow for that breakdown of silos between different departments.

There is a concern, though, that I have—and I think that concern would be shared by other members in this House—and that's the permissive language of the bill that sets the stage for generic inspectors—some people have referred to them as super-inspectors—being brought in to take the place of many different inspectors with very different disciplines. I have concerns that if you

bring in a generic inspector you will actually lose out on expertise that's needed to safely guide one through a variety of different areas.

Speaking from experience, dealing in the past with inspectors for the city of Toronto who were dealing with building code and public health concerns, certainly those people who are fully trained in health matters—epidemiology—have a clear sense of how to stop the spread of contagion, who know how to ensure that food preparation is dealt with properly, who have training over some years and then experience over some years in making sure that the health of the public is properly protected, have a very different culture and knowledge base from those who are building inspectors. The ability to ensure that concrete is poured properly, that foundations are in good shape and that code is respected in a building is something that is doable only by someone who has had full, proper and complete training and, beyond that, years of experience actually delivering on-site, and who has familiarity with exactly what is safe building practice and what isn't—a very different set of skills, mindsets and approaches from those who are dealing with public health. Similarly, someone who's doing inspections around worker health and safety will have a very different picture of what constitutes safe industrial or construction practice from a person whose training is entirely in building code or in public health.

I have real concerns that if one tries to put in place a system wherein a building inspector—or the provincial equivalent, a health and safety inspector—and an environmental inspector are all conflated into one person, you won't have the quality of inspection and of enforcement that's really needed. To go into a new environment, a new building, a new company, and ask intelligent questions that will elicit the information needed to actually ensure that the legislation the inspector is meant to carry out is carried out can't be done in four or five areas.

1850

Mr. Speaker, when you were actually not in that chair but speaking from these benches, you spoke, I thought, quite well about the need to have the ability for an inspector who sees a problem in an area to raise it with another department. So if a health and safety inspector is in a slaughterhouse, for instance, and sees a problem that has nothing to do with the health and safety of the workers but has a lot to do with the health and safety of the public, then you're entirely right that that person should have the ability to speak to other departments, raise issues and see to it that the collective good is dealt with

properly and isn't inhibited by some bureaucratic barriers.

My colleague from Nickel Belt talked about the problem she saw with the generic inspector when she talked about the potential loss of incredible skills and incredible training when we think about inspectors who work in mines. She talked specifically about people who go down into mines in Sudbury for the Ministry of Northern Development and Mines with specific and particular expertise that I wouldn't want to see lost because this bill ended up resulting in a position that is more generic rather than one with really specific skills and an understanding of what to look for in very specific environments. Actually, that's a pretty good summary of the argument.

The government needs to assure not just the other legislators in this chamber but the population of this province that in the course of breaking through these silos and making sure that information can be used so that the collective good is served, it won't result in a reduction in the quality of inspection work done by people in a broad range of areas.

Aside from that, there is a question of the workload. If someone is sent into a factory to do a health and safety inspection and is required at the same time to do a variety of inspections around toxic chemicals and emissions, one has to be concerned about the total burden they will be carrying. We already know that in this province those who are responsible for inspecting and enforcing in the environmental area are way, way overburdened. If you go to the report of the Environmental Commissioner of Ontario, under "Neglecting Our Basic Obligations," his comments about what is really happening with environment inspection and enforcement in this province, you can see that we already have a severe problem with inspection that has nothing to do with multitasking or siloing but a lack of skilled and capable personnel who can actually do the work that's needed.

There was one particular area that the Environmental Commissioner cited under "Neglecting Our Water Wells." Though studies have shown that a high proportion of private drinking water wells in Ontario are contaminated with bacteria, nitrates or other dangerous substances, serious limitations in the wells regulation make it difficult for the Ministry of the Environment, now severely lacking trained staff, to prosecute violations. Revisions to wells regulations in 2003 lowered chlorination levels for disinfecting new wells to an "inadequate" level, according to an MOE advisory panel, and uncertainties in the interpretation of complicated provisions of the regulation also mean that it is extremely hard to enforce.

We already have a situation where we don't have enough environmental inspectors. Those that we do have are dealing with regulations that are quite complex and, in the case of water wells, not now being properly enforced. The idea that one would benefit the collective good, benefit the citizenry, by opening up silo walls so that these people were responsible for inspecting in other

areas as well doesn't seem to be a reasonable approach to me. In fact, it opens up a variety of substantial problems.

Similarly, the Environmental Commissioner talks about nutrient management, "Amending the Nutrient Management Regulation." He states that the government has amended the regulation under the Nutrient Management Act that sets out how farmers must apply manure and biosolids, such as sewage sludge to their land. Unfortunately, only six years after the Walkerton tragedy, some of the changes have weakened both accountability and the assurance that farmers are following the rules that protect human health. For example, the Ministry of Agriculture, Food and Rural Affairs no longer has to approve the nutrient management strategies of large livestock operations unless they are expanding or are located within 100 metres of a municipal well. The changes also mean that farmers are no longer legally required to keep records of how they comply with their own nutrient management plans, which may make key aspects of both the regulation and the Nutrient Management Act itself virtually unenforceable.

My sense from reading the comments of the Environmental Commissioner of Ontario is not so much that our problem here is a lack of universality in the ability of environmental inspectors, not so much a concern that they aren't able to benefit from input from other departments and other jurisdictions; the concern is that there are too few of them, and the legislation itself is now so complex as to be, in a number of instances, virtually unenforceable. The question that occurs to me as I go through that is, why is the government bringing forward this bill? What is the end point if it isn't actually to make the enforcement of regulation more effective, if the point is not to in fact protect the population as a whole?

I would say that you can look at other instances in the environmental field where we don't have adequate inspection at this point, adequate enforcement of law. For instance, there are regulations requiring firms to conduct waste and packaging audits and to develop waste reduction plans based on those audits. Those are very key tools for diversion. As we all know, disposal of waste in this province is extraordinarily controversial. To the extent that we can divert waste from disposal, we can both benefit this province environmentally and also reduce the amount of conflict that goes on in our society. Unfortunately, we aren't even coming close to meeting the waste diversion targets that were identified in the last election. Because we don't have inspectors, we haven't been enforcing the regulations that we do have on the books. So again I ask, what will be the utility of this act in putting multiple tasks on the backs of inspectors if in at least one key ministry, and I suspect others, we are not even enforcing the laws as they exist now?

I would say that it is up to this government to put its house in order and to actually, before it goes—

Mr. Ted Chudleigh (Halton): That's a tall order.

Mr. Tabuns: I appreciate the kind comment from my colleague.

I think it behooves this government to not only try to rely on this legislation to deal with the problems we face with inspection and enforcement but to actually ensure that there are adequate staff in place—adequate inspectors, adequate law enforcers—so that when we pass legislation in this House it is of consequence. We all know examples, I'm sure, of situations in which lack of inspection or enforcement effectively leaves legislation a dead letter.

When I was a city councillor in the old city of Toronto, we had a noise bylaw which was a very handy noise bylaw. As you know, the density in downtown Toronto and the zoning is such that you have commercial uses right beside residential uses, which is fair enough; in fact, I think it has contributed tremendously to the vitality of the city of Toronto. But the reality was that from time to time there were problems with commercial operations, generally nightclubs, that were not interested in making the investments that they needed to make in sound-proofing so that people living near those operations could actually get a night's sleep. In the old city of Toronto, population—what?—750,000, there were three noise inspectors for the whole city. It's a very good way to have a law that looks fabulous on the books but in the end doesn't deliver the goods. No one who operates a noisy business is offended, because you never have enough enforcement officers to actually go and do something. And people who are disturbed get to know that there is a law on the books, so that makes them feel good as well.

Those fundamental problems of actually ensuring that there are people in place so that when laws are passed there are consequences are far more important than the legislation before us.

1900

I understand that the privacy commissioner still has to comment on this bill, has to comment about the whole question of sharing of information. I look forward to his comments. They will put another light on what's before us and give us a better sense as to whether or not what has been proposed has the good sense, the logic in it to allow for improvement in civil service performance, as well as real protection of the interests of citizens who may be caught up in this whole matter.

I would say that it will be interesting in committee to go through the commentary from the public, commentary from those who care about the bill and commentary from people from all three parties as to what should be done to make sure that this bill is actually functional and useful. With that commentary, I'll cede the floor.

The Acting Speaker: Questions and comments?

Mr. Gilles Bisson (Timmins–James Bay): I feel a very short speech coming on: only to say that I agree with everything that was said by my colleague and did realize we had an agreement.

The Acting Speaker: Are there further questions and comments?

The member may wish to respond.

Mr. Tabuns: I continue to be gratified by the confidence the whip for the third party shows in me. Thank you, Mr. Bisson, for endorsing my words. I look forward to you doing that many times in the future, including in caucus.

The Acting Speaker: Further debate?

Mr. Bisson: I was going to use the two minutes as a way of being able to get a couple of quick comments on the record, and I do say they will be quick.

Mr. Chudleigh: Are you using the same notes?

Mr. Bisson: No, no. He's got the briefing note. There are a couple of notes on this particular bill that I wanted to speak to, and that is to the whole issue of inspection.

The government is moving in a direction where they're basically going to make multiple—it's like multi-tasking. I'm out of the mining sector, where I worked in the maintenance section underground and in the mills as an electrician. The employers of the day used to say, "We've got to teach you people how to multi-task. The electricians should be able to do the welders' job, and the welders should be able to do the machinists' job, and the machinists, when it's stuck, should be able to do"—you get the idea. The idea is that you would not only be a tradesperson in your own trade, but you were expected to know a whole bunch about everybody else's trade. That's where this bill is going a little bit.

I understand the urge on the part of the government to make a more efficient system of inspection; I understand the will or the want to do that. But I just want to say that it's not without its downfalls. For example, let's say you have an inspector—we'll talk about health and safety specifically—who happens to be the electrical health and safety inspector for the Ministry of Labour as far as mining. I think it's a little bit unfair to say that you could utilize an inspector who works for the Ministry of Agriculture and Food or the Ministry of Transportation or whatever other ministry to come in and issue an order under the Occupational Health and Safety Act, first of all, which is a very technical act that needs a lot of knowledge as far as how it works, to be aware of what the relationships are between the workers, their employer and the ministry when it comes to that act, but more importantly when it comes to the technicality of what it is that you're trying to make a decision on.

I'm going to tell you a bit of a story that demonstrates just how serious this could be at times. When I worked at the Pamour mine, McIntyre division, some years ago, we had a health and safety inspector from the Ministry of Labour come in who said that he would like to have the health and safety rep who's responsible for electrical go with him on his inspection, so they gave me a call. It was just a snap inspection, so I showed up and I started walking around, visiting the mine with this particular inspector. The point is—I'll cut it very short—that we ended up on a particular section of the hoist where the overspeed controls were faulty. The inspector noticed there was a problem with that particular hoist and issued an order for it to be fixed. I would not want to be in the situation, having to travel up and down on that convey-

ance, where all of a sudden the Ministry of Labour says, "Well, times are tough and we don't have a lot of money. Rather than having two health and safety inspectors, we think we can do it with one because we can get the regular health and safety inspector to go out and do the job of the specialized health and safety inspector" when it comes to electrical, mechanical or whatever it might be. In a case like that, nobody would know where to look unless you're actually trained in that particular type of work. It would be like having the person at the ministry responsible for elevator inspections be replaced by somebody who normally is an inspector at an abattoir or an inspector in the forest or an inspector wherever it might be.

I think we've got to be careful about how we structure this bill. I look forward to understanding exactly how the government wants to do this, because you could end up in a situation where you give the power to inspectors to make decisions on issues that, quite frankly, they don't know a lot about. I think we need to be careful.

I understand that the government wants to deal with the more upfront kind of stuff; for example, when a person walks onto a job site and sees something that's wrong and should be fixed, there should be an ability to say, "I'm not going to wait until the actual inspector comes in in order to do the shutdown or to issue the order. I'll act on what I see now," in the most extraordinary cases. If we're just doing it in the most extraordinary cases, where we give inspectors the ability to issue orders under other acts where they may not have jurisdiction, even that's difficult, but I can understand it to an extent. I don't think I support it at the end, but I can understand the logic, to a degree.

I come back to the point that a lot of this is very technical; for example, if you look at the Ministry of Agriculture, those people who do the testing and do the inspections of abattoirs and farms etc. It's a very specialized field. You don't just take somebody in off the street and say, "Here's a one-week crash course for you to go out and do inspections in an abattoir or on a farm," or wherever it might be. It takes a person who has worked in the field, who understands what the business is all about, who understands the processes of the business and who, most importantly, understands the act. I guess that's where I'm having a problem. What you could end up with is an inspector who's going out to do something and is going to issue an order to somebody but they have limited knowledge of what is contained in the act. I think that's where I get worried.

I want to put on the record that this can be problematic, depending on how it's done. We need to be very clear, through the process, to make sure that the government, in pulling this together, takes those points into account. I think we need to hear from some inspectors who are in the field. We need to hear from business owners who are out there and also the representatives of the workers, the unions themselves, if that's appropriate, to hear what people have to say about this and, "Can this be made to work?" I'm not convinced in my mind that in

the end this will work in all instances. There might be a few cases where the jurisdiction might be different but the work is somewhat similar and you're able to make some kind of fit and adjustment as far as training. But I can tell you, as my good friends across the way know, that a lot of this stuff is very technical when it comes to inspection and you just can't have somebody come in and all of a sudden enforce a section of an act of which they have limited knowledge and, worse, may have very limited or no knowledge of the actual industry that they're doing the inspection in.

I don't want to be in the position further down the road where an overzealous government all of a sudden says, "Do you know what? Rather than having inspectors in each of the various ministries to inspect specific acts, we're going to reduce the number of inspectors and utilize them more efficiently." Well, we know what that means; it will mean that you'll have inspectors going out to an employer's work site or going into a plant or whatever it be and making decisions on things on which they have limited knowledge. This could not only be problematic from a health and safety perspective, but imagine how the employer feels if he or she is in a situation where an inspector is coming in issuing orders on something they know little about. I wanted to put that on the record.

I look forward to seeing how the government is going to deal with this. I must say that I do remain skeptical on this one. I think it's fraught with problems. We'll just see, through the hearing process, exactly how far the government is going to go to listen to people who know a lot more about this than we do, and to hear what the actual inspectors have to say and those people whom the inspectors come in contact with.

The Acting Speaker: Questions and comments?

Seeing none, further debate? Is there any other member who wishes to debate?

Seeing none, the minister may wish to respond. The Minister of Labour is indicating in the negative.

Mr. Peters has moved second reading of Bill 69. Shall the motion carry? I heard a no.

All those in favour will please say "aye."

All those opposed will please say "nay."

In my opinion, the ayes have it. Carried.

Shall the bill be referred for third reading?

Hon. Steve Peters (Minister of Labour): Mr. Speaker, I would ask that the bill be referred to the standing committee on general government.

The Acting Speaker: All those in favour? Agreed. So ordered.

Orders of the day.

Hon. James J. Bradley (Minister of Tourism, minister responsible for seniors, Government House Leader): I move adjournment of the House.

The Acting Speaker: Shall the motion carry? Carried.

This House stands adjourned until tomorrow at 1:30 of the clock.

The House adjourned at 1911.

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