No. 126B

Nº 126B

ISSN 1180-2987

Legislative Assembly of Ontario

Second Session, 38th Parliament

Assemblée législative de l'Ontario

Deuxième session, 38e législature

# Official Report of Debates (Hansard)

# Journal des débats (Hansard)

**Monday 27 November 2006**

**Lundi 27 novembre 2006**

Speaker
Honourable Michael A. Brown

Clerk
Claude L. DesRosiers

Président
L'honorable Michael A. Brown

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Room 500, West Wing, Legislative Building
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

Monday 27 November 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Lundi 27 novembre 2006

*The House met at 1845.*

## ORDERS OF THE DAY

### PUBLIC SERVICE OF ONTARIO STATUTE LAW AMENDMENT ACT, 2006

### LOI DE 2006 MODIFIANT DES LOIS AYANT TRAIT À LA FONCTION PUBLIQUE DE L'ONTARIO

Resuming the debate adjourned on November 22, 2006, on the motion for second reading of Bill 158, An Act to revise legislation relating to the public service of Ontario by repealing the Public Service Act, enacting the Public Service of Ontario Act, 2006 and the Ontario Provincial Police Collective Bargaining Act, 2006 and making complementary amendments to various Acts and by amending various Acts in respect of the successor rights of certain public servants / Projet de loi 158, Loi visant à réviser des lois ayant trait à la fonction publique de l'Ontario en abrogeant la Loi sur la fonction publique, en édictant la Loi de 2006 sur la fonction publique de l'Ontario et la Loi de 2006 sur la négociation collective relative à la Police provinciale de l'Ontario, en apportant des modifications complémentaires à diverses lois et en modifiant diverses lois en ce qui concerne la succession aux qualités pour certains fonctionnaires.

**The Acting Speaker (Mr. Michael Prue):** I believe the rotation is now with the official opposition. The member for Barrie–Simcoe–Bradford.

**Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford):** Thank you, Mr. Speaker. It's always a pleasure to debate in front of you, and tonight is no exception.

Bill 158 is a bill that is composed of a number of parts. I'm going to deal primarily with two parts. I want to start off by saying that the headquarters for the Ontario Provincial Police Association is in Barrie, Ontario, and we're very proud of that. Schedule B of Bill 158 deals with a new statute to deal with labour relations with the Ontario Provincial Police. Obviously, that's long overdue, a stand-alone piece of legislation to deal with that. Certainly, in principle, it's somewhat similar to the Police Services Act in terms of the exclusivity of the Ontario Provincial Police to govern its own operations, in particular subsection 2(3) in that regard. It's pretty straightforward, going through it in terms of what they're directing. As you know, the Ontario Provincial Police Association can't strike, so you're dealing with very tightly knit legislation in terms of what their rights are, what the procedures are to deal with grievance dispute and also to deal with negotiations.

Certainly, I'm very supportive of fair labour relations with the Ontario Provincial Police and the Ontario Provincial Police Association. Not only do we need to ensure that we have the best policing possible to protect the public, but we also need to ensure that the men and women who are in the Ontario Provincial Police are treated fairly. It's very good to see that. Obviously, when we get to public hearings, we'll see if that, in fact, is the case in terms of whether we get submissions from the Ontario Provincial Police Association in terms of what is in here. But I would believe that the fact the Ontario Provincial Police Association president, who resides in my riding, was here the day the government announced the legislation is probably supportive, at least in principle, with respect to having stand-alone legislation with respect to the Ontario Provincial Police.

I'm going to deal quite extensively tonight with respect to the whistle-blower provisions in schedule A of the legislation. The reason I'm going to do that is because it's an important piece of legislation, and obviously it needs to be dealt with in a proper manner and in the context of whistle-blowing and how it came about.

The first piece of information I'm going to comment on is something I was reading on the weekend with respect to a speech that was made by a former Supreme Court justice, Frank Iacobucci—I'm going to get to that—with respect to his views in terms of why whistle-blowing came into effect and how he believes it is somewhat of a sad commentary on the state of the nation in terms of the legislative behaviour we have. That article, which I actually took out of the Hill Times, deals with—and I'll read it—"More Values and Better Leadership Needed for Accountability, Not More Rules."

"Legislating behaviour in the public service does not increase accountability and transparency, says an ex-Supreme Court justice; rather, more values need to be articulated and it starts with leaders.

"'The fact that we are looking at whistle-blower legislation today is very unfortunate and reflects a break-down in leadership as much as anything else,' Frank Iacobucci said last Wednesday at the Public Policy Forum's inaugural Osbaldeston lecture focusing on public service renewal in the 21st century.

"Mr. Iacobucci said the sponsorship scandal was an isolated case and the response to it was over the top. 'It

tainted the reputation of the public service, but in no way drew its core values into question,' he said. 'Quite the contrary. This sad episode illustrated the anger which wells up in Canadians when public servants break from the core values [of excellence, impartiality, honesty, upholding the rule of law and public interest]. This happens from time to time, but when you think back over the last 50 years, not very often.'

**1850**

"There were rules in place that were broken, but the fact the scandal was uncovered is testament to the efficiency of those rules … adding that the further response from the government was too much. 'More rules and more complex procedures' won't make the public service 'safer' from potential 'abuse' because it's all about believing in values and serving the public with them in mind.

"'We need to hear it from the top that this is a public service where we do not turn our heads when we see questionable activities, that this is a public service where we speak truth to power, and that this is a public service where there are consequences for breaking with these value statements This has to be understood from top to bottom and our actions must reflect these words rigorously and consistently across the system. That is the job of leaders.'"

Those are the comments that were given by a former Supreme Court jurist, Frank Iacobucci, who I think is very well respected throughout this country, with respect to his views on the legal system, but I think also dealing with public policy itself. So his view, capsulized, is that it's the fault of the leaders. Don't point your finger at the public servants, who are trying to do their job. And if there are breakdowns in the system, it's for the leadership of the country to make sure that there isn't a breakdown in the core values within not only our society but also the public service. That is one view, from a respected Supreme Court jurist who doesn't, frankly, support the principle of whistle-blower legislation.

On the opposite end of the spectrum we have such individuals as Allan Cutler, who is well renowned within this country with respect to dealing with whistle-blower legislation. I spoke with Mr. Cutler at some length. He provided me with some information on looking at the bill and his expertise in terms of whistle-blowing that I think the Speaker will find very enlightening in terms of looking at this bill from a perspective of the public servant. And the thesis of what Mr. Cutler is talking about is that when he looks at the legislation which is in Bill 158, he says, "Would I be protected as a whistle-blower?" I think that's the fundamental principle in terms of, "Would I, as a public servant, risk everything that I have"—not only their job but also their future—"to serve the public and make sure that something that is fundamentally wrong is reported and that I would be protected in doing that?"

Mr. Cutler analyzed the bill and he came to the conclusion that, "I read the sections as a whistle-blower and I keep asking myself two main questions: Is it clear? Secondly, would I be protected as a whistle-blower?" His response is, "The answer to both questions is no. In particular, in the case of reprisals, it is completely unclear how reprisal can be dealt with in a clear, impartial and consistent manner. Reprisals take many forms." Mr. Cutler gives a number of examples here, and I think most people would be quite familiar with those in terms of dealing with employment situations: "Intimidation, blacklisting, forced transfer, manufacturing a poor record, complete paralysis of one's career, gagging the employees, only loyal employees have decision-making, pursue sham investigations, destroy the evidence, firing, threats, humiliation, denial of meaningful work, isolation, study issues to death, demotion, prevent written record.

"The decisions made in this regard are usually done behind closed doors and, with no paper trail, are difficult to prove. In fact, the employee doesn't often recognize ... these tactics until the damage is done. It is critical to have a body thoroughly understands these issues and their insidious nature.

"A whistle-blower is an individual has lost faith. He or she no longer trusts the organization to live up to its principles. As such, to force this individual to go back and follow the normal departmental rules will not work. They will perceive this as a stalling tactic and expect that justice will not be done. Whistle-blowers are an asset to an organization, not a liability. The decision on whether to expose wrongdoing is based on trust. The decision whether to give the employer the first chance before going public is based on trust. Trust is earned, and many public servants who witness wrongdoing will not report the situation unless they trust their management will do the right thing. Fundamentally, this is a management bill"—and we're talking about Bill 158—"designed to prevent problems, illegalities or unethical behaviour from becoming public knowledge. Secrecy breeds corruption.

"In summary, I would not recommend any public servant trust this legislation if they see wrongdoing or corruption."

That's from Allan Cutler. He comments on a number of areas which I agree with in terms of the difficulties with this bill, because the principle of this bill, when you really get into it, is to make sure whatever is under the carpet remains under the carpet.

"Now, look at section 1. The purposes of the act are all valid, but there are three points that are extremely important in framing the whistle-blowing issue. The first two points underscore the need for impartiality and ethical behaviour at all levels; however, they mention only the public service. Since they are mentioned in the act, it is equally, if not more, important to ensure that ministers and their staff also behave ethically."

So apart from the seven points that are in section 1 under the purposes of the act, he suggests adding another point, which would be number 8, which would be, "To ensure that ministers and parliamentary assistants and persons appointed to work in a minister's office are professional and ethical."

**1900**

Mr. Speaker, I'm sure that you agree with me on that particular point because, let's face it, that is part of the problem in terms of dealing with open and transparent government that any government faces, particularly this government, which is governing from the centre. If you govern from the centre, and that centre is not accountable to the public or any ministerial staff, then how are you ever going to get to the bottom of any particular issue? Ministerial staff and parliamentary staff should be given the same rights to become whistle-blowers if they feel that they should be. Partisan politics shouldn't play in protecting the public interest.

The other section I wanted to talk about—and there are many—is the reporting relationship as defined in part I. It is extremely important to note that this section has a major impact on the defined reporting relationship, since "deputy" and "minister" are defined for the cabinet office: "For the purposes of this act, the Cabinet Office is a ministry, the Premier is its minister and the secretary of the cabinet is its deputy minister."

When you refer to part VI, the importance of this definition becomes clear. Part VI is the section dealing with disclosure and investigation of wrongdoing. Under clause 108(1)(a), "wrongdoing" refers to "a contravention by a public servant, a minister or parliamentary assistant." Equally important is a contravention by a supplier or organization working with the government under a partnering arrangement. For example, management might know of a contravention by a company but refuse to take action. The manager would not necessarily be in contravention. So we need to expand our horizons in terms of dealing with people who do business with the government.

Clauses (b) and (c): Refusal to take action might not be considered an act or omission, or gross mismanagement. Certainly that should be included. An act or omission or gross mismanagement certainly should be something that's under the purview of the whistle-blowing legislation.

Also, under (b), "a grave danger to the life, health or safety of persons or to the environment" is not defined. A case could easily be made that most acts or omissions could not be considered "grave" since it is undefined. That would make the section meaningless. If there is a legal definition of "grave," I'm not aware of it. "Grave" may mean life-threatening. That's a pretty high standard. Life-threatening, in the purest and most immediate sense, is different from what could pose a threat to the public in the future. So I don't think we need to be in a situation where a problem has arisen that we now are in a situation where it's life-threatening, whereas before it could have been prevented.

Under (d), "directing or counselling wrongdoing within the meaning of clauses (a) to (c)": For this to be effective, you need clear definitions of (a) to (c). For example, would Hydro employees who are involved with nuclear reactors—which obviously would be a very serious situation if there was a problem in a nuclear reactor—be covered under this act? It doesn't appear to be the case. Are crown corporation employees covered by this act? Just because the government decides that they don't want to directly hire people at Ontario Hydro doesn't mean that they're not under the auspices of the provincial government's authority.

The bill seems focused only on the provincial government employees, not all provincial levels of government. For example, why would it not also cover municipal employees? Municipalities are the creatures of the province. The province sets standards with respect to what municipalities have to do with respect to the environment, with respect to water, with respect to dealing with other situations like sewage—very important areas that have been made the responsibility of the municipalities. It should be broadened to make sure that if a provincial government official is aware that a municipality is doing something that is wrong and the municipal employees know they're doing something wrong—why shouldn't they have the right, especially when you're dealing with something as fundamental as water? Do we have to recall Walkerton? Is this government ignoring Walkerton with respect to situations that could have been whistle-blown, that should have been reported to protect the public? You cannot exempt municipal employees when you're dealing with such fundamental issues as water, sewage and landfill sites.

It's important that this government be realistic in terms of the real and true powers of what the provincial government covers. The provincial government covers their own directly hired employees and crown corporations, and they're responsible for municipal employees, especially where they put standards on employees in the municipal sector to do their job.

For the government not to do this would obviously suggest they either don't know what they are doing or they're deliberately making sure that this bill is as ineffective as possible, because it is as ineffective as possible. Quite frankly, it's a joke.

I want to deal with clause 112(b). During the investigation, everything should be private. However, this clause implies that the persons involved in disclosures have done something wrong since their names are not to be revealed. This should be the choice of the individual. Furthermore, the government should take pride in the employees who protect the government and represent the principles we value. As for witnesses, it should be their choice.

I would further ask why the government would want to protect persons responsible, unless it is anticipated that they would be senior and close advisers to the party in power. That goes without saying in terms of the cover-up and the lack of transparency that has been evident throughout this government's tenure.

Section 113, "Restrictions on disclosure": Clauses 2(a) to 2(c) should read, "Nothing in this part prohibits a public servant or former public servant to make a disclosure." If the executive council is doing nothing unethical, there is nothing to fear. When I say "executive

council," I'm talking about the Premier and his cabinet. If the Premier and his cabinet have done nothing unethical, there's nothing to fear. The only possible reason to prevent or not authorize a public servant from making a disclosure to the Integrity Commissioner is that the Premier and the cabinet have something unethical or illegal to hide. The Integrity Commissioner is an officer of this Legislature and should be able to hear all the evidence of unethical or illegal activity.

That's a big point, Mr. Speaker, and I want you to reflect on it. Under section 23 of the Members' Integrity Act, the Integrity Commissioner is made an officer of this Legislature. This bill purports to put the Integrity Commissioner into a direct reporting function with the deputy minister. There's something wrong with that. That Integrity Commissioner is an officer of the Legislature and is supposed to report to this Legislature.

Subsections 115(1) and 115(2): Neither the Public Service Commission nor Management Board of Cabinet should be able to establish procedures to deal with disclosures of wrongdoing. That's what this bill gives them. Establishing procedures is an excellent means to make a well-intentioned law useless, as the procedures can be extremely onerous. These procedures aren't even defined in this bill. It's typical of the style of the Minister of Government Services. He doesn't like to put everything in the bill. He likes to keep it in the regulations because he likes to have that flexibility.

That's fine, but when you're dealing with whistle-blowing legislation, which is supposed to be transparent, and they are portraying to the public that they're going to make sure that whistle-blowing is there to make sure that someone who's a whistle-blower will want to come forward, those procedures should not be kept from the public for their own scrutiny to make sure they are in fact transparent and workable and do protect the whistle-blower. The government is not doing that.

**1910**

Clause 115(3)(a): This is completely unacceptable. Potentially the whistle-blower can be directed by a procedure to report to the person who is causing the problem. This is an excellent tactic to give power to management and to muzzle and control information on wrongdoing. That's a problem. What are we doing here? Is this another smoke-and-mirrors exercise? The whistle-blower has to report to the person he's supposed to report on? Do you expect that anything is going to be done? I hardly think anyone is ever going to whistle-blow in that situation.

Clause 116(a): As I read it, the public servant must have reason to believe that it would not be appropriate to disclose the wrongdoing. That means the public servant must justify his or her decision. This clause should simply read, "The public servant or former public servant can choose to disclose the wrongdoing to the Integrity Commissioner."

Section 117: There are weaknesses in the decision process, and it is very open to abuse. Per paragraph 1, it would be easy to establish a procedure or policy and then state correctly that the matter is outside of the Integrity Commissioner's authority. The paragraph should allow for judgment by the Integrity Commissioner. In other words, give the Integrity Commissioner some discretion. Change the wording in the opening paragraph from "shall" to "may": "Where the Integrity Commissioner receives a disclosure of wrongdoing under section 116, the commissioner may refuse to deal with the disclosure if one or more of the following circumstances apply...."

The government, in its wisdom, is looking at tying the hands of the Integrity Commissioner by making it mandatory for him not to deal with something if it falls in with one of those grounds. That is wrong. The Integrity Commissioner is an officer of this Legislature. It's the Integrity Commissioner's discretion to decide what he or she feels is the direction to go to protect the public interest. We're not talking about small issues here. We could be talking about pollutants going into a river, pollutants going into a stream, tampering with water, E. coli in water. Why are we setting up a procedure where that could be hidden from the public?

Paragraphs 6 and 7 of section 117: Without an investigation, it would be impossible to know if "the disclosure is not sufficiently important" etc. or if too much delay has resulted. Furthermore, the repercussions of whistle-blowing make it highly improbable that the complaint would be made without good cause. I agree with that. Why would anyone put themselves on the line, for their future and their job, if they weren't doing it with good reason? I believe that is another element of this bill that the government is looking—because there are all kinds of exemptions to make sure that the Integrity Commissioner can't deal with whistle-blowing. That particular provision is wrong.

Paragraph 8 of section 117: Many public policy decisions have consequences. Again, the Integrity Commissioner should be allowed to determine this, not just be told that there is no jurisdiction. It can easily be argued that most problems are linked to or are the result of public policy decisions. Therefore, this would have the effect of reducing the bill's effectiveness.

The next section deals with a referral by the Integrity Commissioner, subsection 118(3). The Integrity Commissioner should be given the independence and staff to investigate. This is a real problem in this bill because right now we have an Integrity Commissioner, and the Integrity Commissioner has two full-time staff. The government is saying, "We want you to be the whistle-blower referee, Mr. Integrity Commissioner." With three staff and in excess of 100,000 public servants, does that make sense to you, Mr. Speaker? Obviously, they're not taking this seriously. You cannot have, as contemplated in the act, in section 3, a civil service investigating itself. To give it to a deputy minister etc. is asking them to investigate themselves. That is what the bill provides. If the Integrity Commissioner decides that there's a basis for a whistle-blowing complaint, then the Integrity Commissioner transfers the matter to a deputy minister. Why? Because he hasn't got the resources to investigate

this properly or do the job. They're saying, "Pass it off to the deputy minister." So what we have is the civil service investigating the civil service. Where's the independence? Where's the transparency? There isn't any.

As a deputy minister is in the line of authority—and everybody in the listening public should know that we have a minister who is an elected public official, an MPP. The deputy minister is an unelected public official who is second in command in the ministry and in effect is the operational head. So you're saying to the person who's whistle-blowing in that ministry, to the Integrity Commissioner, "Pass it off to the deputy minister to look into this whistle-blowing complaint by an employee of that ministry." Who seriously would think about bringing forth a whistle-blowing complaint in that situation?

The situation is dire. We're not just talking about waste. You can talk about waste within a government, especially this one, in terms of overspending, doing things that aren't right, but if you had a serious situation, a grave situation—if you want to use that terminology—where the environment is being impacted, where the ministry has decided not to enforce their own laws when some company is polluting into the water, why would we have a procedure which delays reporting that? Why would we have a procedure which would allow the deputy minister to cover it up? It doesn't make sense.

As the deputy minister is in the line of authority, in some way this reflects on their management skills, and an impartial investigation will not result. The Integrity Commissioner, as an officer reporting to Parliament, should not be subject to having a person designated by the Premier. This is clearly interference with impartiality. It's an interference with my right as a member of Parliament, the privilege that I enjoy as a member of Parliament, to do my job. The Premier's office has gone out of their way on more than one occasion to make sure that we can't do our job here. The classic example is Bill 107, the time-allocated bill, making sure there are no more public hearings, making sure this bill has to pass when they want it to pass, making sure that over 200 people aren't going to be able to make a presentation. That's the kind of government power that is wrong.

Furthermore, the Integrity Commissioner cannot ensure the quality or accuracy of the report if it is not done by the Integrity Commissioner's staff. So the deputy minister is doing a report, and all they're required to do is send the report back to the Integrity Commissioner. How does the Integrity Commissioner know that they've done a thorough investigation? How does he know that this deputy minister didn't overlook evidence or choose to overlook evidence? All they have to do is hand in a report. The referral should be removed and sections 118 and 119 need to be rewritten to ensure that the Integrity Commissioner can do his job and make sure that we have an independent and transparent system.

The next section is section 122. This goes to the heart of the matter. It limits when the Integrity Commissioner can investigate. If the issue is integrity, then the Integrity Commissioner reporting to this Legislature is the correct person to deal with it. Furthermore, the Integrity Commissioner is perceived as impartial and not biased.

Subsection 122(5): If the matter had been dealt with, it would not have been referred to the Integrity Commissioner for action. Many of the clauses of section 6 presuppose an answer. For example, this section states "doing so is in the public interest...." Without a proper investigation, this normally cannot be answered.

**1920**

Section 127 gives the party in power the ability to cover up any illegal or unethical practices. If the substance of the deliberations of the executive council are illegal or unethical, they are protected from investigation. This is different from interfering with a police investigation.

I want to go to that section of the bill right now to make sure I've got the right one there. I believe it was 127(b) that I was looking at. Let's just make sure here. I'll read section 127:

"Restriction on powers

"127(1) The Integrity Commissioner may not require the provision of information, the production of a document or thing or the giving of an answer if the Deputy Attorney General certifies that the provision, production or answer,

"(a) might interfere with or impede the detection, investigation or prosecution of an offence; or

"(b) might reveal the substance of deliberations of the executive council or any of its committees without authority to do so."

Come on. Clause 127(1)(b)? Where are we operating here, in a banana republic, where the Premier and the cabinet can do anything they want? If you're going to give the Integrity Commissioner, who is an officer of the Legislature, the power to look into whistle-blowing and they cannot ask for and request documents from the cabinet and the Premier, who may in fact be involved in the wrongdoing, then we're not accomplishing anything here other than making sure that, as Allan Cutler said, this is a bill of cover-up to make sure that you can't get at the information.

Clause 127(3)(b): The Integrity Commissioner must be able to see all documents, including those that were prepared by legal counsel. For example, the actions that are under investigation may not have conflicted with the legal advice that had been given. This would be important to know.

Just to put that in context, clause 127(3)(b) is another section which limits the Integrity Commissioner's ability to do his job. Just to read that:

"The Integrity Commissioner may not require the provision of information, the production of a document or thing or the giving of an answer if the provision, production or answer might disclose,

"(a) information that is subject to solicitor-client privilege"—that is ridiculous. This is supposed to be an open and transparent government and they're going hide

behind solicitor-client privilege when we're dealing with something that might be in the grave public danger—"or

"(b) information prepared by or for counsel for a ministry or a public body for use in giving legal advice or in contemplation of or for use in litigation."

Come on. Why would we be putting solicitor-client privilege in the way when we're dealing with something that in the view of the Integrity Commissioner affects the grave public interest of this province? You can't have exemptions such as that because it makes this situation untenable. It goes back to what the Supreme Court jurist Frank Iacobucci talked about. Why do you even need whistle-blowing legislation? If the leaders of the government are not prepared to lead, are not prepared to have core values, are not prepared to make sure that the public service does their job, are not prepared to make sure that the hired political staff, whether for the Premier or the cabinet, do their job in an ethical manner, then of course the rules are going to be broken. By why go through a hypocritical exercise such as this, creating restrictions, limiting the power of the Integrity Commissioner and making the Integrity Commissioner an officer of the deputy minister, as opposed to this Legislature, if you're really serious about dealing with whistle-blowing?

You have to ask yourself the question, "If I was a whistle-blower, would I come forward?" Why would you come forward if the deck is stacked against you not only in procedure, not only in what the Integrity Commissioner can do, but also in what the government, the Premier and his cabinet can hide? We know this government is pretty good at that.

In subsection 129(1) and throughout section 129, the Integrity Commissioner is required to make a report to the person under whom the commissioner made the referral. This is direct interference with the Integrity Commissioner's office. The commissioner reports to this Legislature and is responsible only for reporting to this Legislature. That is almost a contempt of this Legislature. I may have to look into that even further because, quite frankly, you may want to delegate—and perhaps they can do it under the Members' Integrity Act—in dealing with not only this act or another act in terms of having the Integrity Commissioner do other functions. It's another thing to say to the Integrity Commissioner, "You have to make your report to the person under whom you make the referral." That is wrong. That is a contempt of this Parliament, because that report should go to the House. Why is it going back to the deputy minister who is supposed to be reporting on the whistle-blowing? It should go back to this House. It's like telling the Environmental Commissioner, "We want you to go out and check all things about the environment, but we sure don't want you going back to the House. You bring it back to the deputy minister, and we'll look after it." This is wrong. It's contempt of this Legislature. It's an infringement on my right as a parliamentarian. I'm not going to make this a point of privilege, because I can do that on another day. But it's contempt, and they know it.

Now, section 130—

**Mr. Ted Chudleigh (Halton):** Now is a good time to do it.

**Mr. Tascona:** I'm just getting going. Ask a lawyer what the time is, and he'll tell you how to make the watch. I'm just rolling here. I don't know why I only have 60 minutes to deal with this.

Subsection 130(1) makes it optional for the Integrity Commissioner to report or not report the wrongdoing. At the least, a general outline of each situation should be given and tabled in Parliament. The Integrity Commissioner reports to the Legislature. They're saying, "It's optional. You don't have to go back to the Legislature to report the wrongdoing." I don't think the government thought this thing through, or they have no respect for the parliamentary system with which we deal. They're in contempt. The Integrity Commissioner has to come back to this Legislature to report wrongdoing. For anything else to happen is totally wrong.

*Interjection.*

**Mr. Tascona:** I've read the bill. You should try reading it.

Section 140: This is confusing. One of the major problems is a lack of understanding and expertise in whistle-blowing issues. This is obviously evident in whomever the Minister of Government Services asked to draft this or do the discussions. Getting back to the point, there was no public consultation on this bill before they got into it. The only people they talked to were the public sector unions, because there is another section in this bill which deals with getting rid of the successor rights legislation that was put in by the previous government. That's going to be removed. Those are the only people who were consulted.

Back to section 140: Three different ways of handling the same situation will result in an uneven application of remedies and mixed messages. Also, the public servant with a "final and binding settlement by arbitration" has no ability to appeal, because we're dealing with a public sector union employee going to the grievance settlement board and a non-union employee going to the labour relations board. These are quasi-judicial settings. What would be better would be one impartial body capable of mediating results. The Integrity Commissioner could do this. If the public servant does not have a satisfactory result, then the court system should be open to them for remedy. The whistle-blower goes through all this exercise to protect themselves, then management doesn't like it, forces them into a quasi-judicial setting and they have no right of appeal because they're deciding whether the whistle-blower should have gone forth in the first place.

**1930**

Then we have subsection 140(11). It is expensive to defend yourself. At least the public servant should be able to recover appropriate costs, including legal, training, living and accommodation. Under this bill, the public servant has no entitlement to their legal costs, having to protect themselves for having gone forth in the first place with

the whistle-blowing. It is unbelievable, why anyone would put themselves on the line.

I want to quote from the other night, from Mr. Barrett, the member from Halton. He spoke about Bill 158. This was on November 22. He said, "Again, we're debating Bill 158 this evening, commonly known, I guess, as amendments to the Public Service Act—the full title is the Public Service of Ontario Statute Law Amendment Act. There may be warrant to refer to it as the whistle-blower act, but for that to occur would require a bit of work. It would require, I assume, some amendments to toughen this up a bit, because there is a perception out there already that this particular piece of legislation would not be that effective in enshrining whistle-blowing within the public service...."

He goes on to say, "We know that the function of whistle-blowing is so important, as we saw in the exposé of corruption in Ottawa. I think of heavy industry; I know it's very important for employees, whether they're union, non-union or management, to be able to pick up that phone or write that letter to make authorities aware of issues, whether they be government inspectors, people within the community or the media, to ensure that some rights are rectified. On that point alone, I feel that this piece of legislation is a bit of a letdown.

"Going back to the election, I remember many of the members opposite, and the McGuinty Liberals in general, promising taxpayers that government business would be public business. We see no public consultation to date on this one—obviously, no public consultation on a public service act. There is a challenge out there to ensure that, unlike Bill 107, there is a full agenda of public consultation across the province with respect to this public service act. We will find out whether this is yet another commitment from this government that has the potential to be unfulfilled.

"This Legislative Assembly debated a motion a few weeks ago that delineated 50 McGuinty Liberal broken commitments, and the number continues to grow. Today, we may well be adding a broken promise to make government business public if we don't get full hearings on this particular piece of legislation." I see no commitment to that.

"Yesterday—and this was mentioned quite recently—we learned the Attorney General was speaking with a forked tongue, if I can use that expression, when he promised additional hearings on Bill 107 and then reversed himself. I can't understand why Liberals refused to come forward in a forthright way. Over the three years of this government, what I have detected is what I consider a chronic situation as far as telling the truth. Endless policy reversals on the Caledonia crisis come to mind, demonstrating again that members opposite are prepared to say absolutely anything if it will get them re-elected.

"If you tried to take one of these commitments to the bank, you could well be charged with trafficking in counterfeit currency."

He goes on to say, "Today, we're debating reform of the public service. When we talk about the public service, it's important to break it down to those men and women, those good individuals who make up our public service, the public servants. Public servants are there to serve the public interest.

"I consider myself a public servant....

"I received some information from a fellow named Randy Robinson, with OPSEU, a communication to me which made it clear that he did not want to see any kind of structure or system where public employees have their comments vetoed by somebody else in the managerial chain of command. Obviously, there can be no legislated or regulated structure that would allow that to occur. We know informally within the workplace, obviously, that those who report to others, who have supervisors—so many people—could be gun-shy on an issue like this. When I talk about whistle-blowing, I think of people like Mr. Allan Cutler, who exposed the Liberal sponsorship scandal.

"This could well be a major deficiency of this particular legislation. Another major deficiency with this McGuinty regime is its inability to directly tackle issues. Another major deficiency is this Liberal government's lack of interest in real debate, as we have seen in recent weeks, obviously, with Bill 107—that number has come up a number of times, not only this evening but today—shutting out stakeholders who deserve input on human rights. That is an outrage, obviously. If they're not interested in real debate, quite honestly I see no reason for us to be here this evening. I see no reason to be here either.

"For this reason, Speaker, I call for adjournment of the debate."

And so do I, Mr. Speaker. I call for adjournment of the debate.

**The Acting Speaker:** Mr. Tascona has moved adjournment of the debate. Shall the motion carry? I heard some noes.

All those in favour, please say "aye."

All those opposed, please say "nay."

In my opinion, the nays have it.

There are five standing. Call in the members. There will be a 30-minute bell.

*The division bells rang from 1935 to 2005.*

**The Acting Speaker:** All those in favour will please rise and be recognized by the Clerk.

All those opposed will please stand and be recorded by the Clerk.

**The Clerk-at-the-Table (Mr. Todd Decker):** The ayes are 7; the nays are 22.

**The Acting Speaker:** The motion is lost.

The member from Barrie–Simcoe–Bradford has the floor.

**Mr. Tascona:** I rise again. I was interrupted briefly, but I'm prepared to continue. I still think I need more than 60 minutes, but I'm limited.

**Mr. John O'Toole (Durham):** He can't make his point.

**Mr. Tascona:** My good friend from Durham has joined me here, hopefully for a short while. But he's here, in spirit and in body.

I'm going to continue along and deal with this bill. Yes, we rang the bells here tonight, and there's a good reason why we're ringing them; everybody knows. I haven't seen a commitment for public hearings on Bill 158.

I go back to what I'm talking about here in terms of values. Supreme Court jurist Frank Iacobucci talks about leadership, and there is a lack of leadership in a government when they have to resort to whistle-blowing legislation. This isn't whistle-blowing legislation. There are two parts to this: Number one, it's usurping the role of this Legislature by having the Office of the Integrity Commissioner report to a deputy minister, which is contemptuous; secondly, they're covering up whistle-blowing. The way they've got it set up here with respect to procedure, if you're challenged on this and you have to protect your job, you go to a quasi-judicial procedure and you get no costs, even if you win. You have no right of appeal, even if you lose. What kind of a system is that? That's an unfair system. It's essentially making sure that there isn't going to be any whistle-blowing when this government's around, because they have exempted the Premier's office, they have exempted the Cabinet Office, with all their political players. They hide behind solicitor-client privilege. There is no way that the Office of the Integrity Commissioner can get at documents that are covered by solicitor-client privilege or were used to give a litigation opinion. We're not talking about a law office here; we're talking about the government, which is supposed to be transparent, which is supposed to do the people's business. We're talking about situations that have to fall under the definition of a grave danger to the public, yet they have the right to restrict access; they have the right to tell the Office of the Integrity Commissioner, "Do what we want."

The biggest problem I've got here, among others, is the role of the Office of the Integrity Commissioner. They've got to come up with a better procedure here. You cannot have an officer of the Legislature reporting to a deputy minister, and then reporting back to the deputy minister with respect to the report that was done by the deputy minister, which could be very focused in terms of what they're looking at and leave out the evidence that needs to be looked at, because all they do is get a report.

**2010**

I started out here tonight as the speaker. Though the Liberals had an opportunity to put up a speaker, they put nobody up because they don't want to debate this bill, which is kind of opposite to what we're trying to do here in terms of coming up with the best bill we possibly can. So what they're trying to do out here is shut out debate, just like what they're doing with Bill 107: They're shutting out public comment and public consultation. There was no public consultation on Bill 158, and there's certainly a lack of it on Bill 107.

The government should really be thinking about what they're doing here in terms of what they're trying to accomplish in this session. Quite frankly, what's coming out here is that they're bringing in whistle-blowing legislation to make themselves look good, when in fact what they're trying to make sure is that there is no whistle-blowing, that nothing is going to happen.

I don't know whether they're going to time-allocate this. I guess they'll decide when the House leader finishes his paper and gets around to deciding what he wants to do tonight. Is he going to time-allocate Bill 158? I don't know. They time-allocated Bill 107 because they didn't want any more public consultation. They have fundamentally changed the human rights act in this province, and they don't want to talk about it anymore. The Attorney General said, "Let's get it back in here, let's vote on it and let's get it over with, because we've heard enough." They can't hide behind Barbara Hall anymore because she doesn't want any part of it. She's the commissioner.

**Interjection:** Or June Callwood.

**Mr. Tascona:** Yeah, June Callwood's another one. I think the member for Halton had a quote from June Callwood. Then I think the member for Halton said:

"But further to Bill 158, and further to Bill 107, if the Premier was truly interested in debate and improving debate in this Legislature, I feel he could the right thing and allow stakeholders to have that input requested. Shutting out stakeholders, in my view, is despicable. If this government, this Premier and the members opposite aren't interested in true debate and input, I again question why we are here, and in questioning why we're here, for that reason, I call for adjournment of the House."

And so do I, Mr. Speaker. I call for adjournment of the House.

**The Acting Speaker:** Mr. Tascona has moved adjournment of the House. Shall the motion carry?

All those in favour will please say "aye."

All those opposed will please say "nay."

In my opinion, the nays have it.

Call in the members. There will be a 30-minute bell.

*The division bells rang from 2012 to 2042.*

**The Acting Speaker:** Mr. Tascona has moved adjournment of the House. All those in favour, please stand and be recognized.

All those opposed, please stand and be recognized by the Clerk.

**The Clerk-at-the-Table:** The ayes are 8; the nays are 22.

**The Acting Speaker:** The motion is lost.

The member from Barrie–Simcoe–Bradford has the floor.

**Mr. Tascona:** I'm very pleased to get back to the debate here before I was so rudely interrupted. This is a serious bill. It's time for this government to start taking Bill 158 seriously.

I want to point out another problem here. It's clause 126(1)(b), where it says, "The Integrity Commissioner may require any public servant or former public servant

to produce any relevant document or thing that may be in his or her possession or under his or her control if, in the opinion of the commissioner, the document or thing may be relevant to the investigation." When I think about it, what do you mean by "thing"? Is this the Addams Family or what? I mean, what are we talking about here? "Thing"?

But the real point here is, what happens if the public service is under an obligation to keep information confidential under laws or regulations pertaining to privacy or official secrets? What about employer-imposed confidentiality agreements that have the force of contractual law? This has not been thought through, and quite frankly, I'm disappointed big time.

"Report on conclusion of investigation," subsection 129(1): You see, unlike other members across the aisle, I have read this bill, twice, if not more—I have lost count—because I can't make out what's going on. It says, "On concluding an investigation of a disclosure under this part, the Integrity Commissioner shall make a report to the person to whom the commissioner made the referral under subsection 118(2)." If the matter was investigated by the person to whom the commissioner referred it, then what would the commissioner report to that person, and why? It's a rhetorical question. It doesn't make any sense. What is this? You pitch it back and forth. He refers the complaint to the deputy minister, the deputy minister does a report, then the Integrity Commissioner gets the report, and then he's got to refer it back to the deputy minister. What are we playing here? Children's games? What is this?

The next part is subsection 129(2), dealing with the referral. Really, what this is here is too much buck-passing and bureaucracy. This is inefficient and provides no certainty to the person making the complaint. People take a huge risk when they come forward to accuse their superiors of corruption or other wrongdoing, and they will not feel secure enough to come forward if they don't even know who will be reviewing their case or receiving the final report. That is a valid point, in terms of what we're trying to do.

That's why I say this bill is not only a contempt of Parliament in terms of how they deal with the office of the Integrity Commissioner; it's also an affront to the public with respect to the people who have values. The leaders of this government are basically covering up what they want to cover up. They're not accountable, none of their staff is accountable, and they aren't restricted from access to the official Integrity Commissioner. That's wrong.

I can tell you that this is a real problem. We want the best legislation we can have. As Supreme Court jurist Frank Iacobucci indicated, "Whistle-blowing legislation is not common at all. It's a failure of leadership at the top to do their job, to do it well, to impart the values that they want in the public service to the public service." This government obviously has failed in that task. They think it's great to come out and say, "Oh, we're whistle-blowing," but what they're doing here is making sure that the whistle-blower is definitely not going to be blowing anymore. The whistle-blower is going to be out of the public service. That's what they're looking to do.

On that note, I look forward to the questions and comments.

**The Acting Speaker:** Questions and comments?

**Ms. Shelley Martel (Nickel Belt):** I listened to the comments that were made by the member from Barrie–Simcoe–Bradford, even though it took a bit longer to deliver than I had anticipated when we started tonight. I was going to talk about the whistle-blower section, so I will, when I start next, reinforce a great deal of what he said. But let me say generally that I have concerns about this whole section in terms of whether it will be effective. I listened to the minister on the day the bill was introduced. I heard him say very clearly that the whistle-blower protection would be given to the Integrity Commissioner, so he would do the investigation etc., and that he hoped the proposed legislation would ensure that allegations of wrongdoing could be effectively brought forward and properly addressed.

**2050**

The problem I see is that, as currently written, the sections that provide this authority and set out the processes by which whistle-blowing will occur have a lot of discretion that, in some cases, I think is unwarranted and have other areas where the commissioner would be very much too structured in terms of what he can look at and what he should be able to look at. At the end of the day, I'm not sure that whole section, as it's currently written, would give much comfort either to someone who works in the public sector right now or someone who is leaving the public sector and wants to make a disclosure. I'm not sure there's a lot here that would give them comfort to do that, from two perspectives: first, from the sense that the disclosure will be effectively investigated, that there will be effective recommendations provided and that those recommendations will be lived up to by the minister responsible; and second, I'm not sure they're going to have much comfort that there aren't going to be reprisals and, if they are still a member of the public service, that after the disclosure they will continue to be a member of the public service offering public services to Ontarians.

So I have similar concerns with respect to the whistle-blower protection as those raised by the member from Barrie–Simcoe–Bradford, and I appreciate his analysis and also the analysis he put on the record done by Allan Cutler in this regard.

**Mr. Vic Dhillon (Brampton West–Mississauga):** It's a pleasure to speak on Bill 158, the Public Service of Ontario Statute Law Amendment Act. Our government respects and values the dedication that public servants bring to their work. That's why this bill is very important for those in the public service in Ontario and ultimately for the people of Ontario.

Ontario's public service is second to none. Legislation will help ensure that the public service will continue to be accountable, ethical, non-partisan and professional.

Our current public service legislation has had only minor revisions over the past decades. It has not been significantly changed since first created in 1878. We have consulted extensively with our bargaining agents, current and former ministry executives, government agencies and members of all parties. Feedback was positive and constructive.

Successive NDP and Conservative governments failed to proclaim existing, albeit weaker, whistle-blower protection under the current PSA. As a matter of fact, I'll read a quote from Mr. John Tory: "One government after another didn't do it. I think it is high time that it is being done and I'm glad they're doing it."

We're delivering on our commitments to put whistle-blower protection in place. Our proposed rules are stronger, as they give authority to an independent officer, the Integrity Commissioner, to investigate all allegations of wrongdoing. It gives the Integrity Commissioner the power and authority and resources to investigate and publicly report all cases of wrongdoing.

**Mr. O'Toole:** Every time I listen to the member from Barrie–Simcoe–Bradford, I am impressed by his grasp of the details. There are 142 pages to this bill, amending four separate sections, and there are 156 sections that reference various amendments. It's sort of an omnibus bill in terms of the Public Service of Ontario Statute Law Amendment Act.

They quoted Mr. Tory on this, and you would know his position on this: He is supportive of that particular section of the bill. What troubles me most when I think of almost the contradiction is that here is the Liberal McGuinty government, and I think of the sponsorship scandal in Ottawa. I think it's about time they called in Judge Gomery. They, of all people, being the authors of this bill, should be somewhat suspect. The way they treated Allan Cutler in terms of his role as the principal whistle-blower in Ontario, indeed in Canada, was more than shoddy.

The member for Barrie–Simcoe–Bradford tried to make eminently clear that in 1993 the NDP brought this bill in, and it remains unproclaimed. This is the problem.

I would say to you that we are in support of that provision, the whistle-blower protection in that section. The idea is that we protect it. It's unclear, however, why the Liberals would create an entirely new piece of legislation, when there's one only waiting to be proclaimed by the Lieutenant Governor—

**The Acting Speaker:** Questions and comments?

**Mr. Bob Delaney (Mississauga West):** I was all set to stand up here and talk about the fact that this bill had not changed significantly since 1978, but took a closer look at some of the background and, gosh, it's 1878. It still hasn't changed since the 19th century. Okay, so let's make some changes.

The member for Barrie–Simcoe–Bradford earlier had some fairly important things to say about this bill. He said—and let's use his exact words—"The whistle-blowing part of the bill is certainly welcomed. I look forward to seeing how that's actually going to operate." For the member, now you can see how it's going to operate.

He was asking earlier about what are "things" in the context of being able to access persons, papers and things. Some examples of things could be a CD, a DVD, a computer file, a backup tape, a diskette, a computer chip. I can think of any number of examples of things.

Another person who talked very strongly about this particular bill was—let's repeat it—John Tory. John Tory said, "One government after another didn't do it."

**Mr. O'Toole:** That's the same quote.

**Mr. Delaney:** It's an important quote. Let's repeat it. "I think it is high time that it is being done and I'm glad that they're doing to it," referring to our government. We're doing it. For more than a century this piece of legislation hasn't changed. What would this world be like if you were running your business based on 1870s technology? This isn't 1870s technology. This is going to be a 21st-century law. That's basically what this thing has done.

John Tory likes it. For once we're in accord with John Tory.

**The Acting Speaker:** The member for Barrie–Simcoe–Bradford has two minutes in which to respond.

**Mr. Tascona:** I'm very pleased to comment on the members for Nickel Belt, Brampton West–Mississauga, Durham and Mississauga West. If we're going to do quotes, I was quoted in the Globe and Mail by Karen Howlett. It says, "Tory MPP Joe Tascona welcomed the whistle-blowing protections but questioned why the government would have the Integrity Commissioner probe allegations rather than the province's Ombudsman, who has the expertise and resources."

I've been clear all night. I want a better whistle-blowing protection procedure and I've set out very clearly that the government doesn't like to hear ideas. They don't like to hear anything that might question their regal authority to rule us all, especially in this Legislature. They like to whip us good in this place because they want it their own way.

I'm offering suggestions with respect to the whistle-blowing because I believe that it can be improved, it can be more transparent, it can be better, it can actually serve the public interest, which it's designed to do.

The member for Durham supported me on this, as he regularly does. But the member for Mississauga West talks about things because he's going back to his Addam's Family days. I would say, define it. If that's what things are, define it. Put it in there and say we can know exactly what we're dealing with. Anyone who wants to whistle-blow in this province deserves to know what they're getting into before they do it, that they're going to be protected, that they are not going to be compromised, that they are going to be put in a position where they can actually protect the public interest rather than being someone who can be tossed overboard by the Liberal government.

We want better. Whistle-blowing is something that can be respected if it's done properly. All we're asking

for this government is to do better than they normally do, and Bill 107 is an example of them doing nothing to hear the public.

**The Acting Speaker:** Further debate?

**Ms. Martel:** It's a pleasure to participate in the debate this evening. I'm going focus my remarks entirely on the whistle-blower protection section. The government can accept what I have to say or reject what I have to say. That's certainly up to them, but I would hope that some of what I have to say will be taken into account and some changes made to this particular section.

**2100**

I want to deal with what the minister said both in his press release and in the House with respect to this particular section. Mr. Phillips said, on November 2, "Our proposed whistle-blower protection will give authority to an independent officer of the Legislature, the Integrity Commissioner, to investigate and publicly report on serious allegations of wrongdoing." Again, in the House later that day, when he introduced the bill and made some remark about it, he said, "Our proposed whistle-blower protection will give authority to an independent officer of the Legislature, the Integrity Commissioner, to investigate and publicly report on serious allegations of wrongdoing. The proposed legislation would ensure that allegations of wrongdoing could be effectively brought forward and properly addressed."

The concerns I'm going to raise here in this section really are that the bill as drafted I don't think is going to give comfort to someone who is going to whistle-blow or who wants to whistle-blow. Secondly, I'm very concerned about the restrictions I see on the authority of the Integrity Commissioner, certainly around the processes by which he can investigate disclosures that are made. And the third concern I want to raise is, if we're going to allow an independent officer of the Legislature the power to investigate disclosures—and I agree with that—why aren't we having the Ombudsman do exactly that? Because from my point of view the Ombudsman, who is an officer independent of the Legislature, appointed by all of us, already has the staff, already has the investigative authority, already has the experience in dealing with important public policy matters, and as we have seen from this particular Ombudsman, has no hesitation or concern about taking those head on. I don't know why we wouldn't be giving the Ombudsman the power to investigate whistle-blowing and disclosure, because I think that's where the power should rest.

Let me deal first with the whole disclosure section, section 114, which sets out how this is going to take place. Section 114 says, "Where a public servant or former public servant has reason to believe that there has been wrongdoing, he or she may disclose the wrongdoing in accordance with the procedures established under section 115."

Section 115 lays out two proposals that I don't think are going to work at all. The first is:

"Directives, Public Service Commission

"115(1) The Public Service Commission may by directive establish procedures to deal with disclosures of wrongdoing by,

"(a) a public servant who works in a ministry; and

"(b) a former public servant who worked in a ministry immediately before ceasing to be a public servant. "

The second section after that then deals with Management Board:

"(2) The Management Board of Cabinet may by directive establish procedures to deal with disclosures of wrongdoing by"—the same categories of individuals that I've just described.

I think this section is going to be totally irrelevant. I don't think that public servants or former public servants who feel strongly enough that they want to disclose government wrongdoing are going to take any comfort in following directives that are being set out either by the Public Service Commission or by Management Board of Cabinet. Those people who are whistle-blowing who want to deal with disclosures are doing so because they have no faith in the system that is currently operating before them. They have no faith that if they go to their manager, something is going to be done, or if they go to their assistant deputy manager, something is going to be done, or if they go to the deputy minister, something is going to be done. So I don't think they're going to have any faith in a process that is outlined in directives either by the Public Service Commission or by cabinet; that they're going to get an independent, serious, legitimate review of their concerns. On the contrary, I think people are going to look at this whole section and dismiss it entirely as a mechanism by which they might have their legitimate concerns resolved. I think people who are going to whistle-blow will look at this and see, "There's no room for me here. There's no place for me here. This is not a serious attempt on the part of government to put in place processes and procedures that allow me to put forward a disclosure in a way that's going to be reasonably and legitimately investigated and dealt with." So I think that whole section, frankly, is going to be irrelevant and people are not going to go first to look at those particular directives and use those directives when they want to raise a concern and want to disclose something.

That means that the section around going to the Integrity Commissioner really has to be clear, has to be legitimate, and has to be toughened up a whole heck of a lot, so that, under section 116, the disclosure to the Integrity Commissioner, can occur. I think this is going to be people's first step. I think they're going to disregard the other directives and this will be their first step. It says:

"116. A public servant or former public servant may disclose wrongdoings to the Integrity Commissioner if,

"(a) the public servant or former public servant has reason to believe it would not be appropriate to disclose the wrongdoing in accordance with the directives issued under section 115."

Well, I think the public servant is going to think it's not going to be appropriate because nothing is going to be done under those directives.

"(b) the public servant or former public servant has already disclosed the wrongdoing in accordance with the directives issued under section 115 and has concerns that the matter is not being dealt with appropriately."

That's the very concern that I raised originally: Most people, because they are trying to deal with allegations about their employer, are not going to use directives from their employer to raise those concerns. They're not going to see that as a legitimate process, and frankly, I would think that they would see those directives as just a huge delay in allowing them to actually come forward with legitimate concerns and raise them in a legitimate way.

"(c) directives applying to the public servant or former public servant have not been issued...."

That's even more bizarre. If the government is going to be consistent and issue directives or get the appropriate bodies to issue directives, then the government should do that. If there aren't going to be directives for certain categories of workers or certain workplaces, what's the point? I just think the immediate referral, right to the Integrity Commissioner, would be the most appropriate thing to do, because I don't think anything less is actually going to work.

Let me deal with some more of my concerns in this section. So you disclose to the Integrity Commissioner, and then the Integrity Commissioner has some options. The Integrity Commissioner looks at the complaint or looks at the allegation or the disclosure, and the commissioner can decide not to deal with the disclosure based on a number of conditions. In section 117, there are a number of conditions under which the Integrity Commissioner cannot initiate a referral or cannot even initiate an assessment of the situation in any event, so his or her hands start to be severely tied from this section on.

The one that's the most interesting is paragraph 8, where it says, "The subject matter of the disclosure relates solely to a public policy decision." I've got to tell you, working in the public service, public policy decisions are going to be at the heart of the matter, aren't they? This is what the matter is all about, that there are going to be public policy decisions made, public policy issues rendered, that people are going to have concerns with. Maybe they're bad decisions, maybe they're wrong decisions, maybe there is a hint of criminal negligence, or otherwise. Of course it's going to be public policy decisions that public servants are going to have concerns with and perhaps want to disclose. What else would they be trying to disclose?

The fact that the Integrity Commissioner "shall not" do an assessment or "shall not" deal with a disclosure if the subject matter relates to a public policy decision is, to my mind, just ridiculous. It is a mechanism to ensure that whistle-blowing never takes place. I hope that's not the government's intent, but for goodness' sake, when you read that section, that surely is the outcome; that surely is the consequence. It is so broad, it is so large, and because so much of what the public sector deals with is public sector policy decisions, the very fact that the commissioner shall not deal with disclosures that relate to this matter really effectively means that we're not going to have any whistle-blowing at all. Unless that section is entirely removed, frankly I don't think that there are going to be any grounds for the Integrity Commissioner to investigate any disclosure. So that whole paragraph 8 should be taken out entirely if the government is really serious about allowing people to come forward.

The next section has to do with subsection 118(3). Section 118 deals with the referrals that the Integrity Commissioner makes with respect to disclosures. Again, I'm at a bit of a loss as to why the ministry would have the commissioner do a referral first back to the same people in whom the whistle-blower probably has no confidence in the first place; that's what this whole section deals with. It says that the Integrity Commissioner can receive a disclosure of wrongdoing, and then the Integrity Commissioner shall decide who the matter should be referred to. That matter can be referred back to a deputy minister, can be referred to "Any individual prescribed under clause 71(1)(b)." That's in the regulation-making section, so that's virtually anyone, because it's left to regulation to decide. The matter can be referred to the chair of a public body, the matter can be referred to the secretary of cabinet or the matter can be referred to "an individual designated by the Premier for the purposes of this section." Will that ever send a chill through the public service very quickly, if an individual designated by the Premier is the one whom the matter can be referred to. I just think that that sends a message to the public service that is all wrong. If you are a public servant and you are concerned about a public policy decision by this particular government or another, having your matter investigated by someone designated by the Premier will give you no comfort whatsoever that your legitimate concern is going to be dealt with at all.

**2110**

I question this whole section. If someone is taking the chance to go to the Integrity Commissioner with a disclosure, why on earth would the Integrity Commissioner be referring that important matter back to some of the same people that that whistle-blower no doubt has no confidence or no faith in? If they did, the matter would be resolved. If they thought they could go to the deputy minister, they would. So to refer matters back to the same individuals that some of these folks are going to have no confidence in is beyond me. I don't understand the rationale for these types of referrals to occur, because I think at the end of the day people who might whistle-blow are going to look at this section and say, "Clearly, the government is not interested in hearing what I have to say. Clearly, the government is more interested in putting up roadblocks that will ensure that I do not get a fair hearing, that my concern is not legitimately dealt with. So why should I bother?" And they won't bother. That is what the consequence is of this whole section that allows referrals of these matters back to some of the same

individuals that people in the public service would already have no confidence in, in terms of whistle-blowing. I don't know what the government's going to do with that whole section, but I have serious concerns about that.

Let me deal with subsection 122(1): "The Integrity Commissioner may initiate an investigation of a disclosure of wrongdoing only if...." Now we get out of the referral section and we go to the matter where the Integrity Commissioner might actually be able to order an investigation or undertake an investigation. But it's interesting, because the section says that the Integrity Commissioner can only do that, can force an investigation of a disclosure of wrongdoing only if:

"(a) the commissioner is not satisfied with the report about the disclosure received under section 118 or 121;

"(b) a person who has received a referral under subsection 118(2) has referred the disclosure back to the commissioner...;

"(c) a person who has received a referral under subsection 118(2) has not delivered a report about the disclosure within the time period required...."

Again, this whole section puts some significant restrictions on the Integrity Commissioner that I think will ultimately lead to no whistle-blowing going on. If the commissioner is not satisfied with a report about the disclosure—from my point of view, in many cases that's going to be clearly obvious: You're going back to the same people who probably didn't want to deal with the matter in the first place. That's why you have a whistle-blower trying to do something, because the matter at hand was never dealt with either by the head of the public body or by the deputy minister. I'm not sure what you're going to get in the way of a satisfactory report back if they are, frankly, the problem in the first place.

Secondly, an investigation might occur if the person who should have done the referral—the deputy minister etc.—has referred it back to the commissioner. There are some descriptions about how that will occur; maybe there's a conflict of interest, maybe there's a vested interest etc. So that section doesn't make a whole lot of sense to me. If a person hasn't given a report back to the commissioner in the time limits in this bill, what's the penalty for that? What a way to send a chill through the bureaucracy, or what a way to send a message that your legitimate complaint is not going to be dealt with. How could it be that, if the Integrity Commissioner refers the matter to the heads of some of these organizations, they don't have to make a report back in the time frame that's listed in the bill? What is that? And why is that? What are the penalties for doing that? And if that's allowed in the bill, that the deputy minister doesn't have to send something back or the chair of the board doesn't have to send something back and doesn't have to meet the time limits, what message does that send to people in the bureaucracy who are interested in raising a legitimate complaint? The message it sends is that the government is not interested in ensuring that an allegation of wrongdoing is legitimately going to be dealt with. That section should be out entirely. There should be no reason, no excuse why, if a referral is made, the deputy minister or the chair of a public body or the secretary of cabinet doesn't have to meet the timelines that are set out by the Integrity Commissioner. They should absolutely have to, or there should be penalties involved.

If you look at the section 122(5), following along, it also says that "the Integrity Commissioner may initiate an investigation" in this subsection "if, in the opinion of the commissioner, doing so is in the public interest and would not interfere with or impede the other person or body in dealing with the matter." Frankly, I don't care about the other person or the other body in dealing with the matter. If it's in the public interest, if it's important enough to warrant a full investigation because it's in the public interest, I really don't care what anybody else is doing, what any other body is doing, what investigation, what referral, what report, whatever is going on. The Integrity Commissioner at all times, if he or she believes it is in the public interest to force an investigation, should be doing that in the public interest, and that section should be clarified to say that at all times it's the public interest that comes first in terms of the whistle-blowing that goes on, regardless of any other investigation that might be occurring at the same time.

Let me deal with section 126. This is the section that deals with the power of investigation and sets out some of the requirements that the Integrity Commissioner can make with respect to public servants or former public servants providing information to him or her or producing documents to him or her, or answering questions under oath etc. I'm concerned about this section, because if I look at section 113 of the bill, there seems to be a contradiction in the two sections. Under section 126, it certainly says the Integrity Commissioner may require a public servant to disclose, to provide information, to answer questions under oath, to give evidence under oath etc. But if you go to section 113 of the bill, there are restrictions on disclosures. It says:

"(2) Nothing in this part authorizes a public servant or former public servant to make a disclosure to the Integrity Commissioner of anything,

"(a) that would reveal the substance of deliberations of the executive council or any of its committees without authority to do so;

"(b) that is subject to solicitor-client privilege; or

"(c) that is prepared by or for counsel for a ministry or a public body for use in giving legal advice or in contemplation of or for use in litigation."

So clearly there are restrictions in this section about what a public servant or former public servant could disclose, and those same restrictions do not appear in section 126, where it clearly says that a public servant or former public servant must "provide any information that he or she may have if, in the opinion of the commissioner, the information may be relevant to the investigation," or must "produce any relevant document or thing that may be in his or her possession or under his or her control if, in the opinion the commissioner, the document

or thing may be relevant." Clearly there's a contradiction between those two sections that the government has to sort out.

I'm also concerned about the fact that you don't have to provide information if it's under "solicitor-client privilege." I tell can you, for at least 18 months now I've been trying to get the legal costs associated with the Deskin-Wynberg court case, and the Ministry of the Attorney General, at every step of the way, has been using solicitor-client privilege to block me from getting access to that information. We are now at arbitration at the freedom of information office trying to get this resolved. If that's what I've already experienced just trying to get some idea of court costs paid by this government for the Deskin-Wynberg court case, just imagine what will come under the rubric of solicitor-client privilege for the purpose of this act and for the purpose of whistle-blowing. If this provision stays in, I can tell you that people won't even bother, because it won't be worth it.

Let me conclude by saying this: If the government is going to go forward with whistle-blower protection, and I want them to, I hope that they will take into account what I've said. More importantly, I think that having the Integrity Commissioner deal with this doesn't make any sense at all, from the perspective of an individual who has only two staff, who has very little experience in investigations. I know that the bill says very clearly that from time to time "the Integrity Commissioner may engage, on a temporary basis, the services of a person with technical or specialized knowledge to advise or assist the commissioner...." Frankly, if you're going to do this right, it should be the Ombudsman who has the authority to deal with allegations and disclosures of whistle-blowing. The Ombudsman already has the staff in place, the Ombudsman already has the mandate with respect to much public policy, the Ombudsman already has the staff who know how to do investigations and have done that very well. The current Ombudsman is not worried or concerned or afraid to take on issues that he thinks are in the public interest, so I strongly suggest to the government that the person who should be doing this should be the Ombudsman's office, which is impartial, which is independent, which has the staff. And the Ombudsman, of course, is a officer of the assembly, so that would work very well, because he or she is selected by all of us.

I hope the government will take some of those concerns into account.

**2120**

**The Acting Speaker:** Questions and comments?

**Mr. Brad Duguid (Scarborough Centre):** I appreciate the comments made by the member from Sudbury. Just having a look at this legislation, it is a long time coming, and it's very important for our public servants that on many of these issues there is clarification. When you think about whether it's conflict of interest, whether it's whistle-blowing protection, sometimes not being sure of what your rights are, not being sure of what your protections are has a big impact on how you feel about how you do your job, and frankly, when you look at problems that have occurred at all levels of government through the years, sometimes it comes down to a matter of judgment. So the clarification of things like conflict of interest, for example, is very, very important to people: what's appropriate and what's not appropriate behaviour.

And that sometimes changes, depending on where you are in the country, depending on what level of government you're at and the culture that's developed in those particular organizations. In some places it would probably not be appropriate to go out for lunch with somebody who may be a stakeholder. In other places, it would be entirely appropriate but there might be limits put on it. So the clarification of these things and the limiting of judgments I think is very, very important to the public servants themselves, because at least they know where they stand—and to government as well in terms of the image of the provincial government. I'm not talking about the provincial government in terms of the McGuinty government; I'm talking about the entire public service and the image of the public service.

That's important to the public. It's important that they have confidence in the people whom they are paying to provide the important services that these individuals are providing. Our government has confidence in our public servants, but we feel this clarification in terms of conflict of interest will go a long way in making their job a lot easier and provide a higher level of morale in the public service.

**Mrs. Christine Elliott (Whitby–Ajax):** One of the promises made by the McGuinty Liberals in the 2003 election campaign was to make government business public business. This was a promise to the taxpayers to ensure that the public service continued to be "accountable, ethical, nonpartisan and professional." It was also to protect public servants with whistle-blower protection, so that they would be able to speak out on important issues without fear of reprisal.

Well, with respect to the government business/public business issue, what happened? We get legislation brought forward with no consultation, very reminiscent of what's happened with Bill 107, which we're dealing with right now, the proposed human rights reform legislation, where all of the sudden we have a piece of legislation that we're presented with that has had no consultation with the public to speak of, and one is left to wonder whether it's actually going to achieve the purposes intended or not.

With respect to the second issue, whistle-blower protection, we have the Integrity Commissioner, who is going to be the person enforcing this legislation, and we're wondering why the Ombudsman, who has a much larger staff and the capacity to deal with these issues, wasn't the one who was chosen, rather than the Integrity Commissioner, who of course would be very capable but has very few staff and few resources. So again, very reminiscent of the Bill 107 issue that we're dealing with, this so-called legal support centre, which has been

described by one of the presenters as a set of amorphous promises with very little substance. One has to wonder whether this proposed whistle-blower protection promised by this legislation isn't just more of the same.

**The Acting Speaker:** Questions and comments? The member from—

**Mr. John Wilkinson (Perth–Middlesex):** Perth—

**The Acting Speaker:** —Perth–Middlesex.

**Mr. Wilkinson:** That's right, the good Speaker from Beaches–East York who's sitting in. Or is it the Beach–East York? I'm not exactly sure about that, Speaker.

I'm more than happy to enter into the debate on Bill 158. I come from this—very simply, Mr. Speaker, Steve Guylee, who works at the Stratford Jail, is a member of OPSEU, if I remember correctly. I've met him many times. I had the opportunity of actually spending a day at the Stratford Jail, working with the corrections officers and seeing the tremendous public service that they do. I didn't really have any idea whatsoever of what they did, but they do remarkable work, keeping us and our community and our families safe, and I applaud them for that.

But it was Steve who came to me and asked about a promise made by our party on the campaign trail about the necessity to enshrine successor rights. He's been a tireless advocate for that cause since my election, and when we introduced this bill I sent him an e-mail right away, just to let him know that this was yet another thing that we have been able to accomplish as a government. So I know I will support the bill just on the fact that we campaigned to have successor rights for our public servants and that we're delivering on that, and I appreciate that.

I was a bit confused. I've been here this evening and I know that Mr. Tascona, the member from Barrie–Simcoe–Bradford, was having some concerns about whistle-blowing protection, but then I was reading in Hansard that he had said, "The whistle-blowing part of the bill is certainly welcomed." I don't think he thinks it's welcome now, so I'll have to maybe chat with Mr. Tascona, because he seems to have changed his position on this. He said he looked forward to seeing how it was actually going to operate, that it's obviously going to require significant resources and expertise for that to be handled in a timely manner, in terms of what we're dealing with, but, and I quote, "The whistle-blowing part of the bill is certainly welcomed."

I'll be speaking to this further, but I look forward to supporting Bill 158.

**Mr. O'Toole:** The member from Nickel Belt, I would say, has her heart in the bill. I just want to point out one of the things on the successor rights schedule. There are four schedules to this bill. The successor rights provision says, if you look at schedule D, "Various provisions of the Public Sector Labour Relations Transition Act, 1997, that treat crown employees differently than other employees for certain purposes are amended or repealed to remove that distinction." However, it goes on to say, "The act is also amended to clarify that the crown shall not be considered a successor employer under the act, but that nothing in the act shall be interpreted to prevent the application...." In other words, new employees may not be considered. So it's ambiguous in schedule D, if you look at it in any detail.

One of the main things that's been spoken of tonight is the whistle-blower provision. The member from Stratford, from Shakespeare, is actually right when he says that the member from Barrie–Simcoe–Bradford tried to make the distinction that the whistle-blower provision—Mr. Tory and the caucus on the John Tory side of the House agree. What we have a problem with is creating a whole new regime so it's sort of internal to government. We already have the Ombudsman of Ontario with the resources, the staff and the know-how to be independent and impartial, and to bring some protection for those persons who take great personal risk.

If you look at the history of the Liberal government on this issue, it's almost confounding. When you look at Allan Cutler declaring the issue of the sponsorship scandal and how shabbily he was treated, the moniker is there, the brand is there: the Liberals and conflict of interest, Adscam. It was the cause of a federal election. I have no confidence that the McGuinty government will protect employees who have the courage to come forward to challenge the decisions made by this government, the McGuinty government.

**The Acting Speaker:** The member from Nickel Belt has two minutes.

**Ms. Martel:** Thanks to all the members for their comments. I just want to raise one final concern that I didn't have a chance to. This has to do with section 129. After the Integrity Commissioner carries out his or her investigation, they have to give a copy of their report to the minister or to the public body for which the minister has responsibility. The Integrity Commissioner, after doing that, "may" require that the person to whom the commissioner made the report should provide another report about the actions or the proposals they're going to take to respond to his recommendations or explaining why a recommended action is not going to be taken. Frankly, that should be changed to "shall." There should absolutely be a response from the minister in the ministry where the whistle-blower was, to say what the government is going to do, and in what kind of time frame, to respond to the recommendations or the action that has been outlined.

I can't think of reasons why that minister or ministry wouldn't be responding to the recommendations. If we have gotten to the point where a whistle-blower has carried out the disclosure, where an investigation by the Integrity Commissioner has occurred, where a report has been written and recommendations made to deal with the situation, then I'm not sure what any kind of legitimate reason would be for the ministry or minister not to have to respond, or for the public body that the minister is responsible for not to have to respond to those recommendations. So that section requires some specific changes to say that there shall be a report back, and the

government needs to think seriously again about what possible scenarios there might be where the government wouldn't have to respond.

Again, I just think that if the government is serious about this, then this mandate, this authority, should be given to the Ombudsman. He has the staff already. His staff certainly know how to investigate.

**Hon. James J. Bradley (Minister of Tourism, minister responsible for seniors, Government House Leader):** He's busy.

**Ms. Martel:** He's busy, and that's a very good thing. I'd like to see him even busier dealing with whistle-blower allegations. I think that the Ombudsman is the best person to do that job.

**The Acting Speaker:** The time now being 9:30 of the clock, this House stands adjourned until 1:30 tomorrow afternoon.

*The House adjourned at 2130.*

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