



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 046 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, March 6, 2012

—
Chair

Mr. James Rajotte

Standing Committee on Finance

Tuesday, March 6, 2012

• (1530)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call to order the 46th meeting of the Standing Committee on Finance.

Pursuant to the order of reference of Wednesday, February 1, 2012, we are doing clause-by-clause consideration of Bill C-25, an act relating to pooled registered pension plans and making related amendments to other acts.

We have a two-hour session here for consideration of this bill clause-by-clause. You should all have the clauses in front of you. Pursuant to Standing Order 75(1), consideration of clause 1 is postponed. Therefore, I shall move to clause 2.

My understanding is there is not an amendment until clause 21. Perhaps for simplicity, and members can just stop me at any time, I will ask if there is any discussion with respect to clauses 2 to 20. We will deal with the clauses for which I have no amendments.

[Translation]

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): One moment, please, Mr. Chair.

[English]

The Chair: Okay.

Mr. Giguère.

[Translation]

Mr. Alain Giguère: I'd like some clarification on clause 6.

[English]

The Chair: Okay.

Are there any issues with clauses 2, 3, 4, 5 that members wish to raise? No?

(Clauses 2 to 5 inclusive agreed to on division)

(On clause 6—*Multilateral agreement*)

The Chair: We go to clause 6.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: Clause 6(2) covers the multilateral agreement. I'd like some clarification on the federal labour law. Does this mean that the provincial labour law will prevail over the federal labour law? Labour laws generally give the union a right, an obligation for representation.

• (1535)

[English]

The Chair: Can we have the officials who can best respond to that come to the table?

I'll go to Mr. Jean in the interim.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): My understanding is that clause 6 is simply to authorize the minister to enter into those multilateral agreements. It doesn't deal with the issue of jurisdiction. In fact, it also requires a minister to table any multilateral agreements. I don't understand why it would be of issue here, because it simply authorizes him to do so.

[Translation]

Mr. Alain Giguère: Mr. Jean's question is very interesting. Under the Canada Labour Code and the Quebec Labour Code, the union has a representation obligation. At both the federal and the provincial level, the union therefore has a legal obligation to represent its members. But in this case, an essential element of compensation, specifically the pension plan, does not come under the union's jurisdiction.

I'd like to know how the labour code sets out the obligation of the union to represent its members in this type of situation. Will the union have to work in parallel with the superintendent of financial institutions to defend its members? If there is a transfer of authority to the province, are we also transferring the authority set out in the Canada Labour Code to the province?

[English]

Mr. Brian Jean: I just don't see why it would apply in these circumstances. The clause simply authorizes the minister to enter into an agreement with the other provinces or territories. It doesn't supersede any jurisdictional issue, any labour code, or anything else. So that would be between the unions and the provincial government that would apply, and they would have to abide by those rules, regulations, and laws in setting up any agreement with the federal government. I don't see what it has to do with it.

The Chair: My question on this, Monsieur Giguère, is why would this not be a question for the province when the province is bringing forward legislation to deal with the issue?

Mr. Brian Jean: Exactly.

The Chair: I'm not sure why it's being raised here.

[Translation]

Mr. Alain Giguère: If you tell me that your answer is final, I'm willing to accept it. If you tell me that, when the provinces discuss this, it will be under provincial jurisdiction and that it will be up to them to give us an answer, I'll accept that, as well.

[English]

The Chair: That is my understanding.

I have Ms. Glover and Mr. Jean, but if there are officials in the room who wish to comment on this—

Mrs. Shelly Glover (Saint Boniface, CPC): That's what I'm going to ask for.

The Chair: —you are free to come forward at any time to offer a comment.

Ms. Glover.

Mrs. Shelly Glover: I'd like to ask the officials a question.

The Chair: Okay.

If you can, just for our information, would you introduce yourselves, please?

Ms. Carol Taraschuk (Senior Counsel, Legal Services for the Office of the Superintendent of Financial Institutions, Department of Justice): I'm Carol Taraschuk. I'm with the legal services with the Office of the Superintendent of Financial Institutions.

The Chair: Welcome back to the committee.

Ms. Carol Taraschuk: Thank you.

There's a similar provision in the Pension Benefits Standards Act. What it does is recognize that there are different jurisdictions respecting pension plans, and there will be respecting PRPPs.

There will be provincial legislation, we hope, that will address situations where a PRPP is established by an employer who is subject to provincial labour laws. This act governs PRPPs established by employers who are subject to federal labour laws.

This will enable jurisdictions to coordinate or try to aim at harmonious legislation and requirements that will apply to PRPPs across the country. So it's recognizing federal cooperation.

The Chair: Monsieur Giguère, does that answer your question?

[Translation]

Mr. Alain Giguère: Yes, Mr. Chair.

[English]

The Chair: Okay.

I should point out that we have officials here from the Department of Finance, the Department of Justice, and the Office of the Superintendent of Financial Institutions. If any of you wish to comment on any questions that are being raised by members, please do come forward to the table. I should have mentioned that at the outset.

We'll deal with clause 6, then.

(Clause 6 agreed to on division)

● (1540)

The Chair: As I mentioned, I don't have an amendment from a member until clause 21, so can I group clauses 7 to 20?

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: I have a question, Mr. Chair. It has to do with clause 10. It's a simple request for clarification.

[English]

The Chair: Monsieur, just wait.

So on clauses 7 to 9, can I deal with those clauses?

Some hon. members: Agreed.

(Clauses 7 to 9 inclusive agreed to on division)

(On clause 10—*Powers of Superintendent*)

The Chair: We'll go to clause 10.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: Authorities are being granted, but the word "can" is being used, not the word "must". Mr. Brian Jean will be able to correct me on this, but I think there's a major distinction between those two words. The problem is that we are referring to this information that will be necessary later. But how can we use these documents if the superintendent of financial institutions isn't required to produce them?

Perhaps it would be a good idea for the departmental representatives to join us at this table.

[English]

The Chair: Okay.

Is there anyone from either OSFI or the Department of Finance who would like to comment on that?

[Translation]

Mr. Alain Giguère: I have good suggestions sometimes.

[English]

The Chair: I don't know how many officials are in the room, but if we could have them sit at the table with us, it might save some time.

You're certainly welcome to join us at the table.

Ms. Carol Taraschuk: Could I ask you to repeat the question?

[Translation]

The Chair: Mr. Giguère, could you repeat that?

Mr. Alain Giguère: Very well. I'll give you some context.

Clause 10(2) reads:

(2) The Superintendent may

(a) conduct studies, surveys and research programs and compile statistical and other information...

The word "may" is used here. The problem is that further on, it says that we must obtain the lowest price possible. So how can we obtain that information, namely, what the lowest possible price is, if the word "must", which would require the superintendent to provide it, isn't used? The word "may" indicates that it's optional.

[*English*]

Ms. Carol Taraschuk: The superintendent has a mandate to ensure that the act is being complied with. This is another tool that the superintendent may use to ensure that the act is being complied with. The superintendent also has authority to require administrators to produce information and to examine those administrators. These are all part of the tools.

This is one tool the superintendent may use.

[*Translation*]

Mr. Alain Giguère: I accept the answer.

The Chair: Okay, thank you.

[*English*]

(Clause 10 agreed to on division)

The Chair: Are there any clauses members have issues with or questions on between clauses 11 and 20? No?

(Clauses 11 to 20 inclusive agreed to on division)

The Chair: Okay. We will go to clause 21.

Here we have amendment NDP-1. Mr. Marston, I will let you move it, and then I have a ruling.

(On clause 21—*Transfer of assets to designated entity*)

• (1545)

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): And I have a kind of tip-off to your ruling, obviously.

I so move. You have the written text there.

The Chair: Do you wish to speak to it?

Mr. Wayne Marston: The goal is to give the power to the superintendent to protect the assets of the contributors immediately, notwithstanding the delays in potential administrations. It's pretty straightforward.

The Chair: Okay. I have a ruling. I will just remind members that rulings of the chair are not debatable. If there is a challenge... The committee can challenge the chair, but I will inform you of this beforehand.

The ruling is as follows.

Bill C-25 creates a legal framework for the establishment and administration of pooled registered pension plans for employees and self-employed persons. A position of superintendent is created to be responsible for the control and supervision of the administration of this act. The superintendent issues licences to corporations to act as administrators of pooled registered pension plans.

Bill C-25 also contains provisions for the superintendent to oversee the actions of the administrators, with the power to transfer a plan's assets to another entity or even to revoke the registration and cancel the certificate of registration of the plan in question. These

remedies are clearly defined, as is the system of objection and appeals.

This amendment attempts to transfer the administrative responsibilities and duties associated with the role of the administrator of a registered plan directly to the superintendent through means of trusteeship. As *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the introduction of this scheme is a new concept that is beyond the scope of Bill C-25, and the amendment is therefore inadmissible.

That is my ruling. It applies to NDP-1 as well as to NDP-4. NDP 4 is on page 6 of the documents I have. It relates to clause 34.

Mr. Wayne Marston: There's no point in challenging the chair; we're outgunned.

(Clause 21 agreed to on division)

(Clauses 22 and 23 agreed to on division)

(On clause 24—*Prohibition—inducements*)

The Chair: We have clause 24, which is NDP-2.

I'll just hint that I have a ruling, but, Mr. Marston, I will let you move it and speak to it.

Mr. Wayne Marston: It's Mr. Giguère's.

The Chair: It is. Okay.

[*Translation*]

Mr. Alain Giguère: Clause 24 reads: ...an administrator must not give, offer or agree to give or offer to an employer an inducement to enter into a contract with the administrator in respect of a pooled registered pension plan.

This is the anti-corruption clause. Basically we need to ensure that the employer, who is obligated to accept this plan, will not be tempted, based on a lateral commercial agreement that does not affect employees, to lock them into an agreement they are not participating in.

I'll give you a very simple example. An employer does business with a bank. The bank suggests to the employer that it will increase the employer's line of credit by \$50,000 if the employer gives the bank the contract for the employees' voluntary pension plan. Obviously, the employees will gain nothing from this deal the bank is offering. It involves only the bank and the employer.

The clause 24 amendment is there just to strengthen the existing anti-corruption clause.

• (1550)

[*English*]

The Chair: Merci.

This amendment is actually admissible. My ruling on this is that the vote on this applies to NDP-7, which is page 9, clause 76, so how the vote goes on this amendment determines the fate of the second amendment, NDP-7, page 9, clause 76, just for members' information.

Ms. Glover, please.

Mrs. Shelly Glover: Thank you, Mr. Chair.

I actually recall having this discussion about this clause during committee witness hearings. I must say that I thought it was addressed at that point.

Clause 24 does, clearly, in our opinion, address the concern that Monsieur Giguère has about an employer trying to receive inducements in the way he described. There was another clause within the bill that addresses any inducements that would benefit all of the people who are involved in the pooled registered pension plan, which Monsieur Giguère brought up during witness hearings, and actually when the officials were here the last time.

I'd like to ask the officials to explain why the clauses that are already in the bill address the concerns Monsieur Giguère has and demonstrate that there is no need to alter them at this time.

The Chair: Ms. Anderson, would you like to speak to that?

Ms. Leah Anderson (Director, Financial Sector Division, Financial Sector Policy Branch, Department of Finance): The intention of the clause is indeed to prohibit inducements for the reasons you cite, but recognizing that there are circumstances where you wouldn't want to prohibit employers from achieving lower costs to members for entering into such an agreement. Those cases are, for example, where, by bundling services that are beneficial to all employees, the offering of both the PRPP and that other service, they can get a lower rate overall. So that's beneficial to all.

Also, in the circumstance, for example, where an employer wants to switch to another PRPP provider, if that PRPP provider, for example, wants to pay the switching fee, that's advantageous to all and promotes competition. So it should be, in our view, considered in the regulatory scope, subject to the regulations in exception to this overall restriction.

The duties of the employer, furthermore, are supported by clause 33, where it does explicitly put an onus on them to say "Subject to the regulations, an employer must not demand, accept". So we have the administrator not being able to offer, but the employer's responsibility is very clear here, that they are not to accept. So they are not immune from the other provisions of this bill, and indeed are targeted at inducements as well.

The Chair: Thank you.

I have Ms. Sgro and then Monsieur Giguère.

Hon. Judy Sgro (York West, Lib.): Just to follow up, then, this clearly allows for some competition in the marketplace.

Ms. Leah Anderson: Yes.

The Chair: Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: I understood clauses 24 and 33 very well. They reflect each other. One deals with the administrator and the other deals with the employer. I was told—and I heard this correctly—that other provisions guarantee that, should the employer or the administrator provide an inducement, the inducement must be favourable exclusively to contributing employees. I don't see this provision anywhere. Can you tell me which clause in the bill

indicates that those inducements must be favourable for the contributors?

[*English*]

Ms. Leah Anderson: Those details will be elaborated in the regulations.

[*Translation*]

Mr. Alain Giguère: Do you mean to say that there are no provisions for this in the bill?

Ms. Glover, you told us that there were. Could you give us some information about that?

[*English*]

Mrs. Shelly Glover: I'm happy to answer.

The point is that the amendment Monsieur Giguère is trying to make is to take out the words "subject to the regulations", which the officials have clearly said will cover important measures in here. What I referred to was paragraph 76(1)(i), which Monsieur Giguère mentioned during officials' presentation here earlier. It specifies inducements that can be offered by an administrator that will benefit all of the people involved in a pension plan. This is just to make sure Monsieur Giguère understands the difference. This is why we would oppose the removal of "subject to the regulations". These are two different things.

I hope I've answered so that he understands that.

• (1555)

The Chair: Okay, thank you.

Ms. Lafleur, would you like to comment?

Ms. Diane Lafleur (General Director, Financial Sector Policy Branch, Department of Finance): Let me be clear. Absent any regulations, the prohibitions are clear, definitive, and without exception.

The Chair: Without regulations, the prohibition is absolute.

Ms. Diane Lafleur: Exactly. So it's not as though there is a gap pending regulations.

[*Translation*]

Mr. Alain Giguère: Still, the regulations could contradict clauses 24 and 33. An employer or an administrator could receive an inducement that is not exclusively to the benefit of contributors.

Ms. Diane Lafleur: That's not the purpose of the regulations that are going to be presented. They will be subject to the normal regulatory process. The public will have the opportunity to comment on the regulations and see what the actual content is before they are adopted in their final form. Everyone will be able to do so.

Mr. Alain Giguère: You are asking us to approve a bill that refers to important aspects of a regulation, but we don't have it.

Ms. Diane Lafleur: That is the normal parliamentary process.

[*English*]

The Chair: Merci.

I have Mr. Jean, please.

Mr. Brian Jean: I was just going to comment on this.

I think it's a very normal process in most of the bills that I've seen before other committees, but to suggest that there shouldn't be allowed to be some exemptions relating to the better purpose of the act—to allow exemptions and particular purposes that would help the employees more and so protect them, even more so in particular circumstances that were brought up earlier—would go against what we're trying to do as legislators.

But also, to go against the very spirit and purpose of the act would not be allowed under regulation anyway. So I think this is quite normal.

The Chair: Thank you.

We'll have the vote on the amendment. This is NDP-2, and as I mentioned, the ruling applies to NDP-7.

(Amendment negated) [see *Minutes of Proceedings*]

(Clause 24 agreed to on division)

(Clause 25 agreed to on division)

(On clause 26—*Low-cost plan*)

The Chair: We have clause 26, and we have two amendments. I have NDP-3 and I have Liberal-1.

I'll deal first with amendment NDP-3. It is on page 3 of our amendments document. I have a ruling on this one by Mr. Marston.

I'll ask you to move it and speak to it.

Mr. Wayne Marston: I'll move the amendment. This will incur costs, most probably, and I have a suspicion as to the result of the response from the chair. However, I'll point out a lack of rigour in drafting this; the board should have been thought of before. We think that's an important part of it, but I'll await your ruling.

The Chair: You're very prophetic.

Bill C-25, in clause 26, provides that any administrator of a pooled registered pension plan must provide those services at a low cost. The amendment attempts to establish a board that would seek to determine the criteria to be used to decide what an acceptable low cost for such services would be by examining the range of other investment options available to Canadians and their associated fees.

As the *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the creation of this board is a new concept that is beyond the scope of Bill C-25, and the amendment is therefore inadmissible. Additionally, the creation of the board may also infringe on the financial initiative of the crown, as the power to appoint persons to a board also includes the power to pay.

I will state that this also applies to NDP-6.

•(1600)

Mr. Wayne Marston: You punched some big holes in our stuff.

The Chair: Okay, so that is NDP-3.

I'll deal now with the Liberal amendment, which is LIB-1, which is on page 5 of your package. That's in the name of Mr. Brison. I'll ask Ms. Sgro to move this amendment.

Hon. Judy Sgro: Thank you very much, Mr. Chair.

I'll read it out:

(2) For greater certainty, an administrator must not charge the members of the pooled registered pension plan management fees that are more than twice the prescribed rate of the management fees reported by the Canada Pension Plan Investment Board.

I think you're well aware of the concerns we have. I think we all are concerned about the same thing, the whole issue of management fees and keeping those fees low. Australia's example made a lot of money for insurance companies, etc., but the Australians didn't quite benefit as much as the insurance companies and banks did. So this is a way of trying to protect the intent of what I believe the PRPPs are trying to do, but it's another way of protecting Canadians and protecting their savings.

The Chair: Okay. Thank you.

I have Ms. Glover on the speakers list.

Mrs. Shelly Glover: Thank you, Mr. Chair.

I want to welcome Ms. Sgro back to our committee. I know she takes this very much to heart.

I was actually excited when Ms. Sgro mentioned another clause, earlier on, about competition, and that would be why this side would not want to see this clause and this amendment to this clause contain anything that resembles some kind of a cap. It would be very important in an effort to keep the costs low that there be competition and that there not be any fee caps. We strongly believe that any time there is such an amendment or such a provision that the fees actually start to very much lean towards what the cap is. For that purpose, it would go directly contrary to what we're trying to accomplish, which is low cost because competition exists.

For those reasons, we will be against this amendment proposed by the Liberal Party.

The Chair: Thank you.

I have Mr. Jean and then Mr. Marston.

Mr. Brian Jean: I was just going to reiterate what she said. We actually heard evidence to that degree. They suggested a cap was not in order because naturally the fees would actually go right to that cap, and they would feel they were priced accordingly. So we did hear evidence to that.

Hon. Judy Sgro: Can I ask a question?

The Chair: I'll put you on the list, and I'll go to Mr. Marston first.

Mr. Marston.

Mr. Wayne Marston: I just want to say we'll be supporting the amendment because we believe there needs to be a cap. We disagree with the testimony. I'm sure the government side disagrees with some of the other testimony that they've heard as well here. Just because somebody gave a particular testimony doesn't guarantee that this will be the outcome. In fact, we think it's important to have a cap on fees. That's one of the reasons you heard us raise the Australian Super fund as many times as we did. That was one of the things lacking. The government side said they learned from the Australian example, so we were hoping there would be a movement on this.

The Chair: Thank you.

Ms. Sgro, please.

Hon. Judy Sgro: This is just a question to those who are more intimately familiar with the bill. Are there any protections in the bill at all that will monitor fees? Or is it going to be left wide open to the provinces to establish whatever they want?

The Chair: Ms. Anderson, do you wish to comment?

Ms. Leah Anderson: We will have detailed regulations in this respect that will set up the criteria for determining low cost, and these will be monitored regularly—by the Superintendent of Financial Institutions, in this case, who is the supervisor. It is also a condition of their licensing requirements. The licensing provisions are under development, as they are subject to regulation, but will again require a demonstration of how the administrator plans to achieve low cost. Over the course of that plan, this will be regularly monitored.

Hon. Judy Sgro: Thank you.

The Chair: I'll go back to Mr. Marston, please.

Mr. Wayne Marston: Ms. Anderson, I'm curious. What remedy would there be if the decision were made that the fees were too high?

Ms. Leah Anderson: In the extreme, if they're not made in the terms of their licence, OSFI has powers to deal with that. That's like an—

Mr. Wayne Marston: But it is going to be hard to figure out how you define what that abusive fee is. That's what we feel is lacking here.

Ms. Leah Anderson: That will be elaborated.

Mr. Wayne Marston: Thank you.

The Chair: If there is nothing further...

I should have mentioned that the vote on this amendment applies to amendment L-2, because it amends clause 76 in the same manner. That is amendment L-2, which is on page 10 of our amendments document, relating to clause 76.

We will take the vote on the amendment.

(Amendment negated) [see *Minutes of Proceedings*]

(Clause 26 agreed to on division)

The Chair: The next amendment I have is on clause 34. Are there any issues—

• (1605)

[*Translation*]

Mr. Alain Giguère: Mr. Chair, you're going a little too quickly. Clause 30—

[*English*]

The Chair: I'm still at clause 27.

The question I was asking was whether there are any issues with respect to any clauses from 27 until 33, because I do not have any amendments. I'm happy to entertain any discussion on any one of those clauses. Which clause would you like to—

[*Translation*]

Mr. Alain Giguère: Clause 30, Mr. Chair—

[*English*]

The Chair: Okay, Mr. Giguère. I'm just doing this in a very orderly fashion.

(Clauses 27 to 29 inclusive agreed to on division)

(On clause 30—*Employer not liable*)

The Chair: We will go to clause 30.

Mr. Giguère.

[*Translation*]

Mr. Alain Giguère: Clause 30 makes the employer not liable. We just adopted a provision where the employer and the administrator can exchange certain favours. Should a contributor feel hard done by and want to sue, the contributor must generally prove three things: that there was fault, that there was damage, and that there is a causal link between the two. But now you are adding the obligation to request that the corporate veil be lifted. Isn't that a bit excessive? There is already protection under the customary provisions of civil law, but you are requiring contributors who feel they have been wronged, robbed, to ask that the corporate veil be lifted under clause 30.

[*English*]

Ms. Leah Anderson: The purpose of this amendment is... Just by way of background, in the initial defined benefit or defined contribution context, it's the employer who is the sponsor of these plans. In the PRPP context, we're taking that responsibility away from the employer and putting it on the administrator. This is a key element in terms of what we hope to find is the attractiveness of these plans for employers: that they have a lot less liability and have less administrative cost to deliver them. That is our expectation: that these will be attractive to small businesses.

Without such a provision, making them responsible for the acts of the administrator—things such as investment returns, their fiduciary obligation about how they invest their funds—would create a real risk that employers... It's not actually their role and responsibility to provide those services, yet they would ultimately be responsible.

This is a bit of a safe harbour for them, in terms of those responsibilities that are directly for the administrator. There are many responsibilities on the employer, as enumerated in this act, which still stand, such as the one we were explaining earlier vis-à-vis inducement. So this is not a blanket exemption from any responsibility; they have clear responsibilities, which are elaborated.

The Chair: I have Mr. Jean on this point.

Mr. Brian Jean: I don't need to speak, if Mr. Giguère has been convinced by that.

The Chair: Are you satisfied with that answer?

[*Translation*]

Mr. Alain Giguère: No, but I will vote against it.

[*English*]

The Chair: Mr. Jean, would you like to speak to this?

Mr. Brian Jean: It only makes sense. No employers would allow their employees to sign up to the contract, if this weren't included, because it excludes civil liability in relation to things that are not any doings by them. If the employers are not responsible for deciding where to administer the funds or where to invest them, they need to be exempted from any liability respecting those matters, because they would be lumped together in a lawsuit.

If, for instance, 10,000 employees wanted to sue the administrator of the fund, they would be part of that lawsuit, if they're not excluded. Why should they be part of a lawsuit in relation to decisions they had nothing to do with? They're just there as part and parcel to help facilitate the employee and the administrator of the fund.

[*Translation*]

The Chair: Mr. Giguère, you have the floor.

Mr. Alain Giguère: My dear colleague, basically your point of view is acceptable insofar as previously you recognized that, first, the employer exclusively decided on the administrator and that, second, that employer could receive inducements from an administrator without it necessarily being to the advantage of the contributors. So, with respect to those two points, these contributors find themselves facing fault: there would be fault on the employer's part for choosing a bad administrator. The contributors would have lost their money. There would be causality, which must be proven legally. A judge will not accept a fishing expedition, that an employer is being sued just because you want to. There has to be an element of proof.

In this case, we're saying that, even if these three things are established, these people are going to come up against a clause that exonerates liability. That's what I have a problem with.

• (1610)

[*English*]

Mr. Brian Jean: That wouldn't include criminal liability. The Criminal Code would still stand and any charges that would follow from it. It would only make sense. Nobody would do it otherwise.

The Chair: We'll leave that as an ongoing discussion, perhaps.

We have had a request for a recorded vote on clause 30.

(Clause 30 agreed to: yeas 7; nays 4)

(Clauses 31 to 33 inclusive agreed to on division)

The Chair: We come to clause 34.

I'll just remind members that my ruling on amendment NDP-1, that the concept is beyond the scope of the bill and therefore was inadmissible, applies to amendment NDP-4 as well.

(Clauses 34 and 35 agreed to on division)

(On clause 36—*Revocation of registration*)

The Chair: We will go to clause 36, and we have amendment NDP-5, which is on page 7 of our amendments document.

Monsieur Giguère, I will ask you to move that.

[*Translation*]

Mr. Alain Giguère: Mr. Chair, do you find clause 36 admissible?

An hon. member: You have to propose it first.

Mr. Alain Giguère: I proposed it and it was accepted.

[*English*]

The Chair: I'm not supposed to give a ruling until you move it, but I think you'll probably like my ruling.

[*Translation*]

Mr. Alain Giguère: But I proposed it.

An hon. member: Yes, but you haven't explained it.

[*English*]

The Chair: Go ahead, Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: Basically, this clause refers to a certain number of timeframes for revocation. Unfortunately, the problem is with the timeframes, and an administrator at fault may commit even more errors.

It basically involves an almost immediate revocation. It isn't bound to the timeframes specified.

[*English*]

The Chair: Thank you. This amendment is in order.

I will seek debate from colleagues, or from officials, if there are any who wish to comment on the amendment.

Ms. Taraschuk.

Ms. Carol Taraschuk: If there is a situation in which members are at risk, likely this wouldn't be the route that the superintendent would take; rather, he would replace the administrator and transfer all the assets out of their control.

The use of this power is very severe, because the revocation of registration actually terminates the whole pension plan. Members' further participation in a PRPP would cease, and it would have to be wound up, unless the superintendent replaces the administrator for the wind-up purposes. But if there is a risk to members, there is no requirement for a length of time that the superintendent has to notify about replacing the administrator, and that would be the action more likely taken.

•(1615)

The Chair: Thank you.

(Amendment negated)

(Clause 36 agreed to on division)

The Chair: I do not have an amendment until clause 41; therefore I will seek to group clauses 37 to 40 together. Are there questions on...?

Mr. Giguère, on which clause do you have a question?

[Translation]

Mr. Alain Giguère: Mr. Chair, I would like some clarification on clauses 39 and 40.

[English]

The Chair: Okay.

(Clauses 37 and 38 agreed to on division)

(On clause 39—*Full-time employees*)

The Chair: We will now go to clause 39.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: I'd basically like to go back to the definition of "full time" and "part time". Clause 39(2), on lines 24 and 25, ends with "...normally scheduled hours of work established for persons in that class of employees." So, that means that there are fewer than 40 hours of work per week. It's basically a provision—

[English]

The Chair: This is a question that deals with subclause 39(2). Are there any comments on that from colleagues or from officials at the table with respect to "full-time basis"?

Mr. Guiguère, I'm not seeing 40 hours. Perhaps you could clarify your question for us.

[Translation]

Mr. Alain Giguère: With that, I'm basically saying is that, here, "full time" isn't necessarily 40 hours a week. It could be 20 hours a week. There's an overlap between full time and part time. I'm also wondering what category an on-call worker would be under or, quite simply, in this case, someone who replaces someone else for a long period, such as for a maternity leave.

The difference between "full time" and "part time" doesn't seem clear to me. Could you please clarify that for me? That's all I'm asking.

[English]

The Chair: There is a question for clarification.

[Translation]

Ms. Diane Lafleur: It's already in the Pension Act. It's a wording that has already been accepted and applied in practice. We didn't reinvent the wheel here.

Mr. Alain Giguère: No, but can you explain to me the difference between a full-time employee, a part-time employee and an on-call employee, in this case?

[English]

Ms. Carol Taraschuk: What's really key is the class of employees. If you're considered in the same class of employee and a PRPP is available to members of that class, you're entitled to also become a member. So you become a member of a PRPP. The hours are essentially not that relevant, if the PRPP is available to the same class.

The Chair: The answer is that you're using the definition that is standard in the Canada Labour Code. Is that correct? In the pension...?

Maybe you could just clarify the act for me, Ms. Lafleur.

Ms. Lynn Hemmings: It's the Pension Benefits Standards Act.

The Chair: Thank you, Ms. Hemmings.

Mr. Marston, do you want to speak to this?

Mr. Wayne Marston: Really, are we not talking about permanent employees as opposed to a part-time employee, rather than about hours of work?

Ms. Diane Lafleur: "Full-time" is not defined the same way by every employer. We're using language here that allows for different employers to define it.

Mr. Wayne Marston: When you say that you can have a permanent employee who has part-time hours, they're still permanent to the company. Then you can have a contingency worker who could work the same hours, but at some point their job ends and they're gone. That is the point I was making.

Thank you.

•(1620)

The Chair: I asked Ms. Glover and Mr. Jean, but here is a question that I ask for myself.

My understanding is that this language is being used to enable as many employees as possible to qualify for the pooled registered pension plan. It's to be a broad enough definition so that as many employers as possible who work for a company can access this pension plan.

Am I correct in assuming that?

Ms. Diane Lafleur: Yes.

Mrs. Shelly Glover: Just as a quick comment, if it helps to explain this, I as a police officer might work 60 hours a week and then take four days off, which is not the same as someone who works nine to five—a 40-hour week—and is considered full-time. So there are classes that are indicated. This is important in order to include as many people as possible who can take advantage of this.

For those reasons, I would say let's proceed and call the question, if you choose to do so, Mr. Chair.

The Chair: Thank you, Ms. Glover.

(Clause 39 agreed to on division)

The Chair: We are on clause 40.

Monsieur Giguère, you wanted to speak to clause 40.

[Translation]

Mr. Alain Giguère: No.

[English]

The Chair: So it was the same discussion.

(Clause 40 agreed to on division)

(On clause 41—*Advance notice to employees*)

The Chair: Now, on clause 41 we have an amendment that is not in your package. We'll call it amendment NDP-5.1. I believe it is from Monsieur Giguère.

As we don't have it, Monsieur Giguère, let me ask you to read the amendment into the record.

[Translation]

Mr. Alain Giguère: I have no problem with that, Mr. Chair.

At the end of clause 41(1), we would add paragraph (d), as follows:

(d) the right of any employee to object to being a member of the plan because of their economic choices.

[English]

The Chair: This would add, after paragraph 41(1) (c), a paragraph (d): "the right of any employee to object to being a member of the plan because of their economic choices."

I'll take discussion on the amendment.

[Translation]

Mr. Alain Giguère: I said "*renoncer*".

[English]

The Chair: Is there any discussion on the amendment?

Ms. Anderson, do you wish to comment on this?

Ms. Leah Anderson: Yes, I have a couple of points. One is that in every circumstance when an employee is giving notice, they have 60 days in which to opt out of the plan. There is a provision—and Lynn might be able to help me out with exactly which one it is—that sets out that, subject to the regulations, a member may set its contribution rate to zero for a time.

We are elaborating that regulation, but it is in keeping with the concept of hardship. So there are two instances: either up front...and then there is contemplated this setting of the contribution rate to zero in the future for that reason.

Ms. Lynn Hemmings (Senior Chief, Financial Sector Division, Department of Finance): I would just note that the setting of the contribution rate to zero is under subclause 45(2).

The Chair: Okay.

Subclause 45(2) says:

Subject to the regulations, a member may, after notifying the administrator, set a contribution rate of 0%.

Thank you.

I have Mr. Marston.

Mr. Wayne Marston: Is there any time limit for which it can be left at zero?

Ms. Leah Anderson: In the initial period, if a member wants to opt out initially, it's forever. But the frequency and duration will be specified in regulation and be subject to further consultation with stakeholders.

Mr. Wayne Marston: So we really don't have the definitive answer, then, as to how long they could set it for at this point?

Ms. Leah Anderson: But it's contemplated in the act for that reason.

Mr. Wayne Marston: Thank you.

The Chair: Thank you, Mr. Marston.

I have Ms. Sgro.

Hon. Judy Sgro: To clarify that, they're automatically part of it, but is it going to be as simple as their indicating to the employer that for personal reasons or whatever they do not want to be part of it and their having the option to put zero down?

Ms. Diane Lafleur: Yes. For the opting out up front, they don't have to justify why; they can just opt out.

Hon. Judy Sgro: Okay.

Thank you.

The Chair: Thank you, Ms. Sgro.

Mr. Jean, please.

Mr. Brian Jean: I was just going to say that clause 46 also anticipates that they won't be charged anything and that they would have the option of opting out by the 61st day. This is consistent with what the officials are saying.

• (1625)

The Chair: Okay, thank you.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: Mr. Chair, I greatly appreciate this attention. But if we allow one person to opt out of a plan for religious reasons, which is perfectly acceptable, we should be able to apply the same justification in the case of someone who doesn't have much income and must choose between paying the rent or contributing to the plan. If we allow someone to opt out of the plan from the start for religious reasons, we should allow someone who doesn't make enough to deal with an economic situation to do the same.

I truly want to believe that we are giving religious justifications an important status, but economic status is the essential element in this matter. If someone wants to refuse, for his or her specific economic reasons or for any reason he or she provides, that person has the right to say no. You said that this was a choice, so why deny that person the choice right from the start?

In clause 41, you allow someone to opt out of the plan for religious reasons, at least 30 days before entering into a contract. Why not also allow anyone to opt out for economic reasons? If it's their choice, why not give it to them?

[English]

The Chair: Ms. Anderson.

Ms. Leah Anderson: Subclause 41(5) is the provision with respect to opting out. Within that same section, whether it be for economic reasons or for whatever reason the employee may have, they have the right to opt out within 60 days.

The Chair: Monsieur Giguère, I don't know whether you'll accept the answer, but the answer the officials are giving is that they believe that what you want is accomplished in either other parts of the clause or other parts of the bill. Again, that's a matter of debate.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: That's your opinion, Mr. Chair, and I have a different one.

[English]

The Chair: Okay. That's why we live in a beautiful democracy.

(Amendment negated)

(Clause 41 agreed to on division)

The Chair: I'll go as fast as the committee allows me, but I do not have another statement from the chair until clause 57.

Are there any issues, questions, or concerns from clause 42 until clause 57? Can members indicate to me whether they have issues or concerns?

Monsieur Giguère, on which clause would it be?

[Translation]

Mr. Alain Giguère: I would like just one clarification about clause 56.

[English]

The Chair: Okay, Monsieur Giguère. Just wait a moment.

(Clauses 42 to 55 inclusive agreed to on division)

The Chair: Now we'll go to clause 56.

Monsieur Giguère.

(On clause 56—*Sex discrimination prohibited*)

[Translation]

Mr. Alain Giguère: Clause 56 reads:

56. The sex of a member or of their spouse, former spouse, common-law partner or former common-law partner must not be taken into account in determining the amount of any contribution required to be paid by the member under a pooled registered pension plan.

When you say that their sex must not be taken into account, is "their sex" to be interpreted in a very broad sense or in a very limited sense? In other words, before we had women and men; now, people can be transgendered, transsexual. Is "their sex" being interpreted broadly?

Ms. Diane Lafleur: It's in the broad sense. It's the same wording that's currently in the Pension Act and it's consistent with what's in the Charter.

• (1630)

Mr. Alain Giguère: Thank you.

[English]

The Chair: Thank you.

(Clause 56 agreed to on division)

The Chair: Clause 57 had an amendment, NDP-6, but the ruling I made on NDP-3 applied to this one, as I mentioned, because it was beyond the scope of the bill, and therefore we will not be discussing that amendment.

(Clause 57 agreed to on division)

The Chair: I do not have any amendments until clause 76. Are there any questions, concerns, items between clauses 58 and 75? I can group them all together, if there are no issues. I'm sensing that I can.

[Translation]

Mr. Alain Giguère: I would like some clarification on clause 67.

[English]

The Chair: Okay.

(Clauses 58 to 66 inclusive agreed to on division)

(On clause 67—*Application to Federal Court*)

The Chair: We will go to clause 67.

Mr. Giguère.

[Translation]

Mr. Alain Giguère: Mr. Chair, please allow me to catch up. You're moving through the votes faster than my pencil can follow.

Clause 67 reads as follows:

67. (1) If an administrator, employer or other person has omitted to do anything under this Act that is required to be done by them or on their part or contravenes a provision of this Act or the regulations, the Superintendent may, in addition to any other action that the Superintendent may take, apply to the Federal Court for an order requiring the administrator, employer or other person to cease the contravention or to do anything that is required to be done, and on such an application the Federal Court may make that order and make any other order that it thinks fit.

I would like some clarification. With certain measures where the speed of execution is essential to protect the inheritance of the contributors, isn't it too much to ask the superintendent to go through this process? It basically gives someone with dishonest intentions ample time to carry out those dishonest operations.

[English]

Ms. Carol Taraschuk: If there were a serious contravention, the superintendent could issue a direction that they take certain actions to remedy the non-compliance.

Proposed section 66 then would be used to do a quick enforcement, as it would only require the filing of the direction with the Federal Court, as opposed to making a formal application.

The Chair: Mr. Jean, please.

Mr. Brian Jean: This is the same as for any other relief that you would seek, including an order of mandamus or certiorari, or compelling them to do anything. The Federal Court has jurisdiction to do so on an emergency basis.

[Translation]

Mr. Alain Giguère: If we issue an order, it won't be done overnight.

[English]

The Chair: Okay.

(Clause 67 agreed to on division)

The Chair: I'll let Mr. Giguère's pencil catch up to my voice.

(Clauses 68 to 75 inclusive agreed to on division)

(On clause 76—*Governor in Council*)

The Chair: I will just address clause 76. We had two amendments here, but the vote on amendment NDP-2 applies to NDP-7, and the vote on amendment Liberal-1 applies to Liberal-2. We therefore don't have to deal with those two amendments.

I had an indication from Mr. Mai that he wishes to address an issue here that he has talked about with Ms. Glover. We'll hear Mr. Mai on clause 76 on this issue.

[Translation]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

As discussed, in its brief, the Canadian Bar raised a unintentional consequence of applying this bill, especially with respect to aboriginals. The brief says:

If an aboriginal person earns exempt income, ...

And exempt income is defined as a tax exemption under section 87 of the Indian Act.

...no RRSP contribution room is created with respect to that income. Contributions to a PRPP for that individual will generate penalties under Part X.1 of the Income Tax Act. An aboriginal person earning only exempt income could not participate in a PRPP, but can participate in registered pension plans.

The Canadian Bar Association's recommendation was to amend this section of the Income Tax Act. After discussion, we realized that we could not do it here. However, I want to raise the importance of taking this into consideration when there are regulations. We need to make sure that the intention, which was not to exclude aboriginals from the PRPP, will really be protected in that respect.

•(1635)

[English]

The Chair: Thank you, Mr. Mai.

I will ask Ms. Glover, as she's on the list, and then perhaps one of the officials wishes to address that issue.

Ms. Glover.

Mrs. Shelly Glover: Thank you, Mr. Chair.

I do want to thank my colleague for taking an interest in ensuring that aboriginal peoples do have the same ability to take advantage of some of these measures that are put forward by our committee and by our government, essentially.

Having discussed this with Mr. Mai, I did notify Mr. Mai that the government does have some plans to address some different

amendments in the future. We will be considering what has been said here today with regard to aboriginal peoples in that context.

But I would ask the officials, as you've done, Mr. Chair, to address the question of whether or not the Bar Association's determination is accurate. My understanding is that there's a difference between whether or not they apply if you consider it a pension versus a savings plan. With your permission, Mr. Chair, I'll turn it over to them.

The Chair: Mr. Donelle.

Mr. Andrew Donelle (Special Advisor, Pensions, Tax Legislation Division, Department of Finance): The tax rules for PRPPs were released in mid-December. There was a 60-day consultation period, which just recently closed, so the tax policy branch is currently reviewing all the submissions we received.

I'd like to point out that in the existing tax rules for pension plans, the definition of compensation would include any employment income that a native Canadian would receive, even if not taxable. But admittedly, the original round of tax rules has a hybrid between RRSP rules and RPP rules, and that point needs to be clarified. I don't know whether we're going to go to the earned income rule of RRSPs or the pension plan rule.

I believe the Canadian Bar Association did send a submission to us, but I don't recall that this particular issue was in their submission, so it probably should come forward to the tax policy branch of the Department of Finance, and we will include it in our current assessment for future recommendations for final adjustments to the tax rules.

The Chair: Thank you.

Mr. Mai, do you wish to speak to this again?

[Translation]

Mr. Hoang Mai: I simply want to say that I received the amendments proposed by the Canadian Bar Association yesterday, I could provide them with those.

[English]

The Chair: For the officials...?

Mr. Hoang Mai: Yes.

The Chair: Okay. Thank you.

(Clause 76 agreed to on division)

The Chair: Now, I don't have any further amendments, and I don't want to go too fast—

Voices: Oh, oh!

The Chair: —but I will perhaps ask, can I group clauses 77 to 86 together?

(Clauses 77 to 86 inclusive agreed to on division)

The Chair: Are there any issues for clauses 87 to 95?

(Clauses 87 to 95 inclusive agreed to on division)

The Chair: Clause 1 is the short title. Shall clause 1 carry?

(Clause 1 agreed to on division)

The Chair: Shall the title carry?

(Title agreed to on division)

The Chair: On division.... I thought we were going to win that one.

Shall the bill carry? On division?

An hon. member: Can we record the vote?

The Chair: You want to record the vote?

We'll have a recorded vote.

(Bill C-25 agreed to: yeas 6; nays 4)

The Chair: The bill carries.

Shall I report the bill to the House?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: On division? I thought we'd get one unanimous....

Okay. Thank you, colleagues. I appreciate that very much.

On behalf of all of us, I want to thank the officials for being here and responding to our questions.

Thank you so much.

That is all. The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>