

Second Session - Fortieth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Human Resources

Chairperson
Mr. Clarence Pettersen
Constituency of Flin Flon

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MANITOBA LEGISLATIVE ASSEMBLY
Fortieth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON HUMAN RESOURCES

Tuesday, December 4, 2012

TIME – 11 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Clarence Pettersen (Flin Flon)

VICE-CHAIRPERSON – Mr. Mohinder Saran (The Maples)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Ms. Howard, Hon. Mr. Kostyshyn

Ms. Blady, Messrs. Cullen, Dewar, Helwer, Marcelino, Mrs. Mitchelson, Mr. Pettersen, Mrs. Rowat, Mr. Saran

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

PUBLIC PRESENTERS:

Ms. Trudy Lavallee, private citizen

Ms. Janelle Sutherland, private citizen

MATTERS UNDER CONSIDERATION:

Bill 3–The Employment Standards Code Amendment Act (Leave Related to the Critical Illness, Death or Disappearance of a Child)

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Mr. Vice-Chairperson: Order. Good morning. Will the Standing Committee on Human Resources please come to order.

Before the committee can proceed with the business before it, it must elect a new Chairperson. Are there any nominations for this position?

Mr. Gregory Dewar (Selkirk): Thank you, Mr. Chairperson. I would like to nominate Mr. Pettersen from Flin Flon.

Mr. Vice-Chairperson: Okay, Mr. Pettersen has been nominated. Are there any other nominations?

Hearing no other nominations, Mr. Pettersen, will you please take the Chair.

Mr. Chairperson: This meeting has been called to consider the following bill: Bill 3, The Employment

Standards Code Amendment Act (Leave Related to the Critical Illness, Death or Disappearance of a Child).

How long does this committee wish to sit this morning?

Hon. Jennifer Howard (Minister of Family Services and Labour): Mr. Chair, I think we can sit 'til we conclude the business.

Mr. Chairperson: Thank you. We have two 'presented' registered to speak today, one on the list of presenters before you, and I have just been made aware that another presenter registered now. So, before we proceed with presentations, we do have a number of other items and points of information to consider.

First of all, if there is anyone else in the audience who would like to make a presentation this morning, please register with staff at the entrance of the room.

Also, for the information of all presenters, while written versions of presentations are not required, if you're going to accompany your presentation with written materials, we ask that you provide 20 copies. If you need help with photocopying, please speak with our staff.

As well, I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations with another five minutes allowed for questions from committee members.

Also, in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This

is the signal for the Hansard recorder to turn the mikes on and off.

Thank you for your patience.

**Bill 3—The Employment Standards Code
Amendment Act (Leave Related to the Critical
Illness, Death or Disappearance of a Child)**

Mr. Chairperson: We'll now proceed with public presentations.

Okay, I will now call Trudy Lavallee.

Do you have any written materials for distribution to the committee?

Ms. Trudy Lavallee (Private Citizen): I do, Sir.

Mr. Chairperson: Okay.

Ms. Lavallee: I didn't make copies, though.

Mr. Chairperson: How many copies do you have?

Ms. Lavallee: I just have one.

Mr. Chairperson: We can make copies.

Ms. Lavallee: Okay.

An Honourable Member: She probably needs it to make her presentation, so maybe after she makes her presentation.

Mr. Chairperson: We'll make copies after the presentation. Please proceed with your presentation.

Ms. Lavallee: And I'm to turn this on?

An Honourable Member: I think it's on.

Ms. Lavallee: Good morning. My name is Trudy Lavallee, and I'm here today as a private citizen to share some of my thoughts on Bill 3, The Employment Standards Code Amendment Act (Leave Related to the Critical Illness, Death or Disappearance of a Child). I thank you for this opportunity, first of all, for allowing me to present my comments and views on the bill as stated.

Okay, first of all, I would like to state that I am in support of a government bill that supports parents in whatever way possible during the most heart-wrenching tragic time in any parent's life as it pertains to a child's death, critical sick-illness or whereby your child is missing. I'm a parent of two teenage girls, and therefore, on a personal basis, I am in support of government support for grieving parents, support for parents going through any type of difficult, devastating time in their lives and in their family's lives as it pertains to their child or

children. I am empathetic and sympathetic to these issues one hundred per cent, and I hope I never, ever, ever have to go through what I've seen other parents go through.

Bill 3, although with good intentions, fails, I feel. It fails to address a multitude of areas, and it fails to represent all suffering parents in Manitoba and Canada. And this bill is filled with gaps.

* (11:10)

This bill, as I see it, is largely based on the federal government's political stance on crime. It's political, and rightfully so, though. In all cases, any child who dies as a result of an offence that has taken place, the government must ensure all measures are taken against these crimes and appropriate retribution is implemented, no questions asked. This I must reiterate on my behalf.

Bill 3 has stated within its intentions, however, does not acknowledge all parents' right to emotional and physical care, support and respite due to the sickness, death or disappearance of their child, whereas it only addresses parents that are employed. Parents, therefore, who are unemployed, perhaps they're a student or they are on social assistance, they are not privy nor will benefit from such a critical financial support safety net due to their devastating trauma that they are going through.

This bill, therefore, already treats all parents differently. To me, it gives the message that if you are a parent in a situation of grieving and emotional turmoil or breakdown because of a serious and/or tragic child situation but you're unemployed, this government will fail to see—or fails to see your suffering and grieving as unemployed parents as equal or worthwhile as it is to employed parents.

Bill 3 already has the underpinnings of treating parents in Manitoba differently. I foresee this posing problems for the government in the future, should the bill pass as written, and many parents—and intended by parents who will address this inequality through a human rights battle.

Just aside on the section—and I forgot to bring the bill with me, so I can't—oh, yes, hold on—in regard to the common law spouse-partner section defined as a parent under 59.9(1)(b), a biological parent, my question is overall: In some circumstances, why would a common law partner of a child in these—in those circumstances benefit from such paid or unpaid leave on both—in regard to both the federal and provincial bills, when it is probable that two

biological or legal caregivers that are employed of the child would be on paid leave already? Would this not be seen as a waste of taxpayers' dollars? And I see—and I say this comment because I see many common law partners that have not invested any type of emotional effort nor love into their partner's child, taking advantage of a paid leave in these circumstances when, in fact, the biological parents will utilize such paid leave. So that's just an example.

Now I want to talk on the crime principle of Bill 3, as currently presented by the Manitoba government: Section 59.2(2) entitlement to leave—the death of child. My huge concern is that the leave is granted to an employed parent of a child who has died, and it is probable, considering the circumstances, because of the death, that the child died as a result of a crime, and there's 104 weeks that have been identified as leave. Section 59.9(3)—entitled to leave of absence from employment of up to 52 weeks if the employee is the parent of a child who has disappeared, and it is probable, considering the circumstances, that the child disappeared as a result of a crime.

Okay, I find the underpinnings of these two sections discriminatory towards all parents who find themselves in circumstances when they're—of the death of their child or the disappearance of their child, because this bill, if passed as written, would only benefit parents who lost a child due to death or disappearance or a child is missing, that's a loss due to a suspected criminal code offence. The bill is insensitive therefore to the suffering of all parents who lose a child. This bill fails to recognize that parents who lose a child because of, say, not a Criminal Code offence—the bill fails to recognize that these parents who lose a child experience the same level of grief and trauma, and subsequent after-effects of loss, regardless if the death or disappearance is reflective of a crime or any other tragedy. Examples would include a disease, an illness, accidents, a car accident, suicide, sickness, et cetera.

And, you know, I think of Jacqueline Romanow, last month, who lost her daughter in that terrible car accident on Wellington Crescent. And she, you know—what about her suffering? What about her family's suffering? You know, it's under—this bill would not recognize that; for her needs as a parent, as a person in society. That's one example.

This bill judges, therefore, the magnitude of suffering experienced by parents who are

experiencing the most devastating time in their lives, and in their family's life.

Also, what is missing in this bill, or fails to address—just a thought, is the—it doesn't address the—maybe it will, you know, if it goes through with changes, with how the bill will be implemented—but, it fails to address the lengthy time that an investigation would take in regard to say, a criminal offence. Say, if it was a crime—and it is well known that these police justice investigations are very lengthy. Therefore, parents could be waiting around for quite a long time to get their employment leave granted; until any type of criminal investigation is completed, in regard to a child's missing status or death.

And that's really all the comments I had on this bill.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have any questions for the presenter?

Hon. Jon Gerrard (River Heights): Thank you for your presentation and your thoughtful comments.

One of the issues that you raised deals with when a child is missing, right. And we have, of course, quite a sad record of the number of children who've been missing or murdered in Manitoba. But it certainly can often be, in the cases that I've followed, unclear if a child—when a child is missing—whether or not this is related to a crime. And there would be, I'm sure, many instances where this would be difficult to determine. And, certainly, in—this is an example, of somewhere where, if parents are looking for their missing child, and you don't know whether it is a crime or not, they're sort of caught in uncertainty with regard to this bill.

Maybe you would comment.

Ms. Lavallee: Trudy Lavallee—thank you, Dr. Gerrard, for the question.

Exactly—and that was part of the reason why I thought about how long investigations take, and, you know, kids go on the missing registry, if they've been missing for, I think, it's 24 hours. I mean, it's just such a process. You don't—your child's missing and they could have run away maybe, or, who knows—and we see it all the time. I mean, I've seen notices come up, you know—child—15-year-old—missing—reported missing—such and such a police detachment—wherever in Manitoba. Thank God many of them are found.

So it doesn't—I mean, there's a process in place. You don't know yet. It takes so much time to go through this criminal investigation process for, say, you know, children that went missing and, if they're found, just, you know, dead. And to do the investigation of finding out what happened—and it's just such a process.

* (11:20)

So I guess it depends on, for me, how this bill unravels out at the end of the day. When a parent or a caregiver would qualify for their leave of absence from their job, after, you know, six, seven months of an investigation. By then, a parent's—you've gone through—I can't even imagine. But what I've seen, you know, you just—you're so traumatized now—as it is and your family—there's family problems. It affects everyone, and there's so much turmoil, and parents would just be at the point perhaps, just saying, the hell with it; what am I supposed to do here? We have more to bargain, you know—they have bigger fish to fry at that time with their emotional turmoil.

Mr. Chairperson: Further questions?

Hon. Jennifer Howard (Minister of Family Services and Labour): Thank you very much for your presentation.

I think one of the points you made is that the bill doesn't address parents who aren't employed, and I just guess I want to clarify. The bill is intended to allow for parents to take advantage of federal benefits, and those benefits are related to employment insurance in one case, and a separate benefit that the federal government is being—is making available.

There are other services available to parents who aren't employed, and maybe we need to do more there, but certainly through Victim Services there are services provided to parents who may be unemployed and certainly prepared to discuss with the federal government whether there's a will to look at providing income support additionally to parents who are nonemployed.

We, in this bill, really, what we're trying to do is allow for parents to be able to use that income support that the federal government is making available at the beginning of January. I think you raise a good point about parents whose children may commit suicide, and that's something we'd certainly be prepared to take forward and discuss with the federal government whether there's an appetite to

look at leaves related to that. I think that's a good point that you raise.

So I thank you for your comments and adding to the discussion today.

Ms. Lavallee: Trudy Lavallee.

Thank you, Minister Howard. I appreciate your feedback on that and especially with, you know, any type of death. Suicide, we know, is a very, very high rate, and, yes, I mean, is it a criminal offence? Suicide? Or is it a crying-out offence from children who are crying out?

Mr. Chairperson: Okay. Further questions?

Since there is no other questions, we want to thank you for making your presentation.

And can we have Janelle Sutherland come up?

Yes, Ms. Sutherland, do you have copies to be distributed to the committee?

Ms. Janelle Sutherland (Private Citizen): No, I don't. I'm just going to talk about my experience.

My name is Janelle Sutherland. I'm originally—I'm from Fisher River Cree Nation. I'm the aunt of the late Heaven Traverse, who was tragically taken from us January of 2005. It was treated as a homicide, her case, and still today we're still dealing with the loss of her.

And during that time my brother-in-law and his wife, Caroline, went through a very tragic time having to deal with the loss of Heaven and having to deal with waiting for answers from the authorities and from the justice. Nothing was said or done for over a year, the first year.

So, during that time they went through a lot, Lawrence and Caroline, and I guess today here too, I'm here to talk about—support the bill because they're—they were unemployed. They had no jobs; they were both on disability, and Caroline suffered a stroke and she was unable to work, and her husband had bad legs which prevented him from being able to keep his balance so he couldn't work; it's difficult for him to walk.

When they were—when the kids were in care, when Heaven was in care, she was in a foster home that was also family-related, and both, I guess, families—the foster parents were both unemployed and both relatives of us. And I guess—and then I guess the biggest thing was not getting any answers or support for Caroline and Lawrence during their

loss, and they had no support from family services or our own government or even provincial—province, or anywhere. They just lived on welfare on the reserve, on disability, and I guess that's pretty much what I could say, I guess, on that, for Lawrence and Caroline.

And then, unfortunately, Lawrence has passed away last year. He died in a trailer fire in Selkirk which took him and his son, took them both, and two other family members also died in that fire. So I'm here to basically try to see and trying to get help for the family that's left, for Caroline and the kids, and try to get—support the bill as well, too, for families who are employed and that are just living on social assistance, too. They all have the same feelings and go through the same things as any of us here that are employed, and I'd like to see something, like, for them, too, for people who don't work and to—support for them as well, too, in helping them deal with bad situations, like what my brother-in-law and wife have gone through.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Mr. Gerrard: One of the aspects of this bill, all right, it mentions a parent would be eligible for this leave and it mentions that foster parents would be eligible for this leave. I think one of the important points that you would make is that in the case of a child in care, that it's very important to remember the biological parents and include them, if they were working, in this bill; if they were not working, you know, in some other way. I think one of the things that you have mentioned, Heaven Traverse was the daughter of Lawrence and Caroline, just to be clear, that Heaven, who was a child who was killed in care in the same period that Phoenix Sinclair was killed, and—but has never got the same sort of attention, and in particular, there was very little attention given to the biological parents of Heaven Traverse, even though, in this case, you know, they had a major loss and in this circumstance.

Mr. Chairperson: Trudy Lavallee.

Continue.

Ms. Sutherland: Okay. You're asking about Phoenix. I guess with that, too, I guess, you know, the family is dealing with a lot right now with the loss of Heaven and seeing the media coverage on Phoenix Sinclair too, makes us think, too, like of what we're going through and how we feel. It's the

same situation, same abuse, I guess, is not something you want to see your children have to go through or any children having to witness any kind of death of their sibling as well, too. And, I guess and with the—I'd like to see support, too, for the families, extended families on this and the foster families that are involved. I guess, yes, that's pretty much it.

Thank you.

Mr. Chairperson: Questions?

Ms. Howard: I just want to thank you for coming and sharing your story on behalf of your family and your relatives and I know it's very painful to have to speak about these things, so I want to thank you for coming forward and thank you for your courage.

* (11:30)

I do want you to know that in the bill the definition is very broad, and so in the situation where you had the disappearance or death of a child who perhaps had both foster parents and biological parents, all of those parents would be eligible for the benefits and the leave. I think the definition also includes anybody who has custody or control of the child, who is like a blood relative. So the intention here is to be broad, to recognize the children of many caregivers and many people that care about them. And, when a child dies or goes missing or is critically ill, there may be many people who can benefit from that leave.

Mr. Chairperson: Okay. Thank you, Janelle Sutherland.

That concludes the list of presenters I have before me. Are there any other persons in attendance who wish to make a presentation?

Seeing none, that concludes public presentations. We now proceed with clause-by-clause consideration of Bill 3.

Yes, Mrs. Rowat.

Mrs. Leanne Rowat (Riding Mountain): I'll wait.

Mr. Chairperson: During the consideration of the bill, the enacting clause and the title are postponed until all—

An Honourable Member: Sorry.

Mr. Chairperson: Excuse me.

An Honourable Member: I would like to just ask one question with regard to the legislation, if

possible. *[interjection]* Afterwards, okay, thank you for clarification.

Mr. Chairperson: Thank you.

During the consideration of the bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? *[Agreed]*

We will now proceed to clause-by-clause consideration of the bill.

Does the minister responsible for Bill 3 have an opening statement? Go ahead, Honourable Ms. Howard.

Ms. Howard: Yes, just very briefly. I think, because I've said in the House and said in my briefings with the opposition members, this bill is designed to mirror federal legislation that will allow for employment insurance benefits for parents who are caring for a child with a critical illness and also new benefits that are coming into place to support parents whose children may be missing or be murdered.

It's very similar to what we have done with other kinds of leaves that the federal government makes available through the EI system. For example, maternity leave. The federal government has the responsibility to use the EI act to make sure that people can get income support while they're on maternity leave. The provincial government has the Employment Standards Code, and so our role is to make sure the people have a job to return to when they come off that leave.

So that is what this bill is about. It is making sure that, if parents take use of the leaves that the federal government is making available, that they won't lose their job while they're on that leave. And so that's what is being done here.

I think it's important for the committee to know that this legislation was looked at at the Labour Management Review Committee, which represents both employers and employees, and also has their consent and support.

Mr. Chairperson: We thank the minister.

Does the critic from the Official Opposition have an opening statement? Go ahead, Mrs. Rowat.

Mrs. Rowat: Mr. Chair, I want to thank the individuals who presented today, Trudy and Sangren *[phonetic]*, and wanted to congratulate them on their efforts today to help expand the questions and to ensure that there's a human element to this bill.

The amendment act—Employment Standards Code does provide a safety net for families who are employed, and I believe that this is a critical piece to ensuring that victims of crime do receive the supports that they require when tragedy does affect their family. Thank you.

Mr. Chairperson: We thank the member.

Clauses 1 and 2—pass.

Shall clause 3 pass?

An Honourable Member: No. I have an amendment.

Mr. Chairperson: Oh. Go ahead, the Honourable Ms. Howard.

Ms. Howard: Mr. Chair, I have an amendment in clause 3, and my amendment is:

THAT Clause 3 of the Bill be amended by adding the following after the proposed subsection 59.9(3):

Exception

59.9(3.1) An employee is not entitled to a leave of absence under this section if he or she is charged with the crime.

And that I'll just briefly speak to that. So in the—No?

Mr. Chairperson: I have to read it first.

Ms. Howard: Okay.

Mr. Chairperson: Okay. It has been moved by Honourable Ms. Howard

THAT Clause 3 of the Bill be amended by adding the following after the proposed subsection 59.3(3)—59.9(3):

Exception

An employee is not entitled to a leave of absence under this section if he or she is charged with the crime.

The amendment is in order. The floor is open for questions.

Mrs. Rowat: Thank you, Mr. Chair, and I appreciate the amendment. That was a concern that we had as a caucus with regard to entitlement of leave.

Just one further question for clarification: It indicates leave of absence under this section, if he or she is charged with a crime. That charge may not happen for some time, and the individual may apply for entitlement. Can she indicate to me how—what the process would be, should that occur?

Ms. Howard: I can speak to our part of the package, which is the leave part. I don't—it would be impossible to go back and retroactively deny a leave, and you can't deny a leave to somebody who asks in the absence of a charge.

So, if someone had the leave—because the leave is unpaid, there is really no way to take away time off that they've taken, but you would remove the job protection—is what would be removed.

I'm not sure how the federal government is going to deal with the benefits. There are ways through the EI system to get benefits back that were paid mistakenly, but we could try to find out from the federal government what their plan would be with the benefits. But, in terms of leave, what would

disappear for the individual would be job protection, because they would've already taken the time.

Mr. Chairperson: Any further questions?

Is the committee ready for the question?

The question before the committee is as follows:

THAT Clause 3 of the Bill be amended by adding the following after the proposed subsection—

An Honourable Member: Dispense.

Mr. Chairperson: –59.3(3).

Amendment—pass.

Shall clause 4 pass? Oh, I'm sorry.

Clause 3 as amended—pass; clause 4—pass; enacting clause—pass; title—pass. Bill as amended be reported.

The hour being 11:39, what is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Agreed.

COMMITTEE ROSE AT: 11:39 a.m.

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