HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

HUMA • NUMBER 005 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, November 21, 2013

Chair

Mr. Phil McColeman

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

Thursday, November 21, 2013

● (1530)

[*English*]

The Chair (Mr. Phil McColeman (Brant, CPC)): I call this meeting to order.

Good afternoon, everyone, and welcome.

This is meeting number five of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.

Today we're continuing our study on the subject matter of clauses 176 to 238, divisions 5 and 6 of part 3 of Bill C-4 , a second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures.

For our first hour today we have witnesses from a number of organizations. We have Mr. Chris Aylward from the Public Service Alliance of Canada, and appearing with him is Mr. Bob Kingston. We also have Mr. John Beckett and Mr. John Farrell from FETCO, Mr. Hassan Yussuff and Mr. Jeff Bennie from the Canadian Labour Congress, and Dr. Katherine Lippel from the University of Ottawa.

Panellists, because we have limited time, one hour, and we're squeezing four different panellists into the presentations, I'd ask you if you could to limit your comments to a maximum of seven minutes. Five minutes would be better, as it would give us more time for questions. You can judge accordingly, but I am going to be very strict on the time and not allow you to go over seven minutes.

We will start with Mr. Yussuff, if you're speaking on behalf of your group.

Mr. Hassan Yussuff (Secretary-Treasurer, Canadian Labour Congress): Thank you, Mr. Chair.

On behalf of the Canadian Labour Congress and its 3.3 million members, I want to thank you for providing this opportunity for us to summarize the impact of Bill C-4, the provisions that make changes to the occupational health and safety regime for workers under federal jurisdiction as defined in the Canada Labour Code, division V.

The health and safety changes to the Canada Labour Code should be taken out of Bill C-4 in their entirety. If the government believes the health and safety provisions of the Canada Labour Code should be amended, it should respect the tripartite process that has effectively operated for decades in this area. We are not aware of federally regulated employers or unions requesting these changes that would gut the principle of the right to refuse dangerous work, making it the weakest in the country. This is of particular concern given Canada's commitment to ILO convention 187.

By redefining “dangerous work” in the code, clause 176 of the bill basically narrows the scope of application that allows workers to exercise their right to refuse dangerous work. The right to refuse work would now only apply to workplace conditions that cause so-called “imminent or serious threat” to the worker. The right to refuse would no longer apply to conditions that pose future dangers, such as exposure to hazardous substances, such as asbestos or cancer-causing chemicals, or those that cause reproductive harm and create mutagenic effects, which are changes that can be passed on to other generations through genetic mutation.

The proposed new definitions will have the effect of setting aside decades of jurisprudence that has clarified the meaning of dangerous work. The new wording opens the door to years of possible legal haggling before implementation can take place.

Changes in clause 180 of Bill C-4 would remove many of the powers of health and safety officers to review or investigate complaints and recommend remedial actions from employers to stop intolerable conditions. These changes would transfer powers to the minister instead, thus creating a new time-consuming bureaucratic hurdle. Many decisions will now be exercised through political direction, at the whim of the politicians of the day.

Subclause 182(1) would give power to the minister to not undertake an investigation, and provides no avenue of appeal for the worker.

Subclause 181(2) would transfer the employer's responsibility to initiate formal investigations over to the workplace health and safety committee, or to the health and safety representative. Ironically, subclause 181(1) of the bill repeals the very part of the code that currently empowers the health and safety committee to require employers to stop dangerous activities until rectified.

Therefore, more responsibilities would now be vested in the committees while at the same time eliminating its powers to effectively act. The linchpin in the authority of health and safety officers to investigate is thus undermined by the new discretionary power vested in the minister.

To a large extent the bill eliminates the flexibility in the current law that takes into account the diverse dimensions of federal workplaces. The new provisions would eliminate flexibility in responding to dangerous work, and introduces the possibility of unnecessary delays.

For example, a current option to involve the workplace health and safety committee in an investigation would now become a strict requirement. However, there are many workplaces where a health and safety committee or health and safety representative are not present.

In like manner, clause 181 will amend the code to require a written report of the employer after investigating a refusal to work, an unnecessary step that only can delay important decision-making.

The government states that these changes will enhance the effectiveness of what it calls the internal responsibility system, the IRS, which is set up to encourage worker-employer cooperation for solving health and safety issues through predefined procedures. The suggested changes will not improve the effectiveness.

The government also claims that in the last 10 years, 80% of refusal cases have turned out not to be dangerous, and thus the reason for these amendments. However, no review, no audit, and no research by the department has been made public for stakeholders to assess. Our requests to the government for such information continue to fall on deaf ears.

We are aware of only one government audit in this area, and the conclusions are known to be faulty. The audit tallied refusals where inspectors had not found a strictly defined requirement for immediate action. Not included in the audit were the number and types of orders that inspectors nevertheless issued as a result of investigating the same refusals, which are important to include, as they are indicators of health and safety violations.

● (1535)

Nevertheless, despite the government's assertion that 80% of cases found no danger, by their standards, one in five cases were determined to be dangerous. Is the government really willing to risk the lives of 20% of workers in the sector found to be in dangerous work situations?

In principle, we agree that work refusal should be better understood, with a view to focus on the most serious cases, but setting priorities, including changing legislation, should be based on reliable and verifiable data. Indeed, reliable data clearly shows that the current regulatory framework is associated with reduction of injuries.

Mr. Chair, I must express disappointment in the government's handling of these proposed changes. Until now, Canada has been a model in the international community for its commitment to tripartite decision-making and consultation with respect to health and safety. Neither we nor the employers, nor any credible stakeholder party to the regulatory review processes overseen by the HRSDC labour program either knew about or had the chance to review the proposed changes prior to the introduction of the bill. We are left to wonder who called for these changes and in whose interests do they serve.

This is all the more disturbing when one considers Canada's ratification two years ago of the ILO convention 187, which is a new framework for occupational health and safety. In its report submitted to the ILO earlier this month, our government unabashedly referred to Canada Labour Code, part II, as it currently exists, to show its compliance to that convention. In that convention, Canada is committed to undertake measures in full consultation with stakeholders through tripartite processes. The government has dismally failed to do so by proposing unilateral amendments to part II of the Canada Labour Code.

The Chair: You have approximately one minute left to wrap up.

Mr. Hassan Yussuff: In the interests of time, I will conclude.

In summary, the changes contained in Bill C-4 serve to: water down protection for workers from dangerous work by redefining "dangerous work" to the most narrow definition possible; render less effective the legislative measures to deal with dangerous work and work refusals under the unproven guise of improving effectiveness; undermine the system of accountability and enforcement that keeps workplaces safe; and place the lives of workers in the federal sector needlessly at risk.

Thank you so much.

The Chair: Thank you.

We'll move on to Ms. Lippel.

Prof. Katherine Lippel (Canada Research Chair in Occupational Health and Safety Law, Faculty of Law, University of Ottawa): Thank you for the invitation. I'm very pleased to be here. I found out yesterday afternoon, so I will not read a text, but I have five points I want to make that do take seven minutes.

First, to introduce myself, I hold the Canada research chair in occupational health and safety law at the University of Ottawa, which means that I've been recognized as an international expert in the field of occupational health and safety law. It has just been renewed to 2020. I have been teaching law since 1978. My other specialty is interpretation of statutes. Both of those will inform what I'm going to say to you today.

I have five points. The first is in relation to interpretation of statutes. I'm a lawyer. I don't want to get all lawyer-like in this context, but I think it's important to look at how lawyers would perceive what's going on with this.

There are principles in interpretation of statute that are recognized by the experts and by the Supreme Court. One is the fact that a change of wording implies a change of meaning. Another is that the legislator does not speak in vain; if they change, for instance, the definition of “danger”, it's for a purpose. Therefore, I have serious concerns in light of this with relation to the ways both the courts but more importantly the workplace parties, who are supposed to be henceforth the ones who are applying this legislation, will interpret the fact that it has been chosen to change the definition.

In terms of interpretation, my second issue is section 24 of the Interpretation Act, which says that the right to appoint includes the right to “terminate the appointment or remove or suspend the public officer”. My concern is that if the minister is henceforth in control of the appointments of the inspectors, it will at least be perceived as making them more fragile in terms of their independence, and the literature is very clear on the importance of independent labour inspectors as such. Certainly it could have a dampening effect on the part of the labour inspectors, who would seek to not displease the minister if they want to keep their jobs.

The second issue I want to look at is the question of the 80% supposedly unfounded rights to refuse in relation to danger. I have serious methodological problems with this, essentially because the message is that you're looking only at the decisions that were brought to the attention of the inspectorate, but if the internal responsibility system works as the minister suggests it does, then the vast majority of rights to refuse never get to the inspectorate. Therefore, all the success cases don't get counted in your statistic. You falsify the orientation by saying 80% are refused because it is only the hard cases that actually make it to the inspector. It's misleading, I find. My fear is that if you change the definition, it will send the wrong message to the workplace parties, because they're going to say, “We're going to tighten up on what we were successfully doing before, which is solving the problems before we get to the inspectorate”. I think we're sending the wrong message.

Third, there is the question of the definition of “danger” and my interpretation of the impact of the change of that definition. I have already mentioned that the changing of a provision is a signal to the courts and to the workplace parties that we're changing a meaning.

To prepare for today I listened to the November 19 hearings and I finally understood what I think the people were trying to suggest. I understand from the testimony of the government representatives that they mean the danger does not need to be serious if it is imminent, and it does not need to be imminent if it is serious. Parsing the law could lead to that interpretation, as perhaps the Supreme Court one day will say that's really what it means, but it's not at all clear to me, particularly in the context of a legislative modification where you presume we're trying to change something. When I read this, if I as an expert take that long to figure out how it could possibly be suggested that a right to refuse for somebody who's exposed to asbestos is not affected by their use of the word “imminent”, then I suggest that for normal people.... If you found what I just said hard to understand, well, workplace parties are going to find it hard to understand when they see the word “imminent” in there.

I have a specific comment on reproductive hazards, because I read that it was suggested that the provisions on pregnant workers take care of that already. It's very clear that pregnant workers are not covered if they are male and if they are trying to reproduce. The elimination of reproductive hazards in the definition systemically excludes males, who are not going to be able to reproduce if they're exposed to hazardous substances that will affect that. I think it's discriminatory. I think it could be attacked under the charter. It is one example of how this actually does change something. Certainly, beryllium exposure, asbestos exposure.... The case law in Quebec is because the word “imminent” is not there, preventing occupational disease that has a long latency. Right to refuse is covered by the legislation.

● (1540)

I have two more points.

One is the internal responsibility system. What we know is that it works very badly in non-unionized workplaces, and I think we need to remember that when we're changing laws like this. It works very badly when job insecurity is rife, and I suggest there are federal workplaces where that might be the case. We know that in the federal government there's $300 million a year spent on temporary agency workers, and we in research know that the internal responsibility system doesn't work in tripartite relationships. It's going to be extremely complicated for those people. The same thing goes for the subcontractors, and we know that the explosion near Parliament a few years back involved difficulties in application of the current Canada Labour Code in relation to subcontractors.

My final point is the importance of the independence of inspectors. I suspect that this is a no-brainer, but just in case, I was reading what was said, “We want to provide them with support and training,” and I think that's wonderful. We should always support and train our inspectors. I would hope they are already provided with support and training. It's unclear to me entirely how they will get more support and training if they're named by the minister. However, for me it's essential that these inspectors be secure in their jobs and feel that they are secure to make orders, including in relation to government employers. This is extremely delicate when the government is one of the employers that's being inspected.

I'll stop there.

● (1545)

The Chair: Thank you for that.

We move on to Mr. Aylward.

Mr. Chris Aylward (National Executive Vice-President, Public Service Alliance of Canada): Thank you, Mr. Chair.

Good afternoon, committee members. Thank you for the opportunity to appear here today. My name is Chris Aylward, and I am the national executive vice-president of the Public Service Alliance of Canada.

Bill C-4 would change health and safety protections that were put in place in 2000 after extensive consultation with labour, employers, and government. This time there has been no consultation with workers or employers or to our knowledge with federal health and safety officers. The regulatory review committee, a tripartite body that addresses emerging health and safety concerns in the federal sector, has received no complaints about the administration of the code, nor has the minister's advisory committee or the labour operations practice committee.

Our first concern is that the new vaguely worded definition of danger will result in a very narrow interpretation of what is considered to be a workplace danger.

Courts typically take a cautious approach to interpreting the definition of danger. The jurisprudence interpreting the definition of danger has evolved in the last 13 years. This jurisprudence would have no value if the definition of danger were fundamentally altered.

Our previous experience with the term “imminent” shows that it has been interpreted to mean “almost immediate”.

For our border services officers and our park wardens, the bullets would have to be whizzing over their heads for the danger to be deemed imminent. Gone is the recognition that the outcome of exposure to a hazard might not occur immediately. Gone too is the explicit language that recognizes that a worker's reproductive system is worth protecting from potential threats.

We are also concerned about the new section that allows the minister to stop further investigation of a work refusal, where she deems that refusal to be trivial, frivolous, vexatious, or in bad faith.

First, an employer could discipline workers who fear for their health and safety without an impartial investigation taking place first. This fear of reprisal would undoubtedly deter refusals to work and endanger workers.

Second, there would be no statutory right of appeal of the minister's decision. That would effectively undermine the right to refuse dangerous work. All that would be left is a narrow scope of review by the court. Judicial review, by its nature, is deferential to the first level decision-maker, in this case the minister or her delegate.

Third, workplace health and safety committees are proven mechanisms to address ongoing workplace concerns. Bill C-4 would eliminate any incentive for an employer to do meaningful consultation and collaboration on workplace issues. The employer could refer such matters to the Minister of Labour, who could silence all health and safety concerns by saying the concerns were trivial.

We have heard it said that these measures in Bill C-4 were prompted by the fact that 80% of all work refusals and appeals result in decisions of no danger. The implication is that the current definition of danger is too broad.

Decisions of no danger don't mean there isn't a problem. Decisions of no danger could just mean that the danger was less serious. In many cases, decisions of no danger were also accompanied by directions written to employers to comply with the law. In other cases, employers were asked to give assurances of voluntary compliance. In the last two years, more than 5,000 assurances for voluntary compliance have been issued per year. The link between these assurances and decisions of no danger is what this committee really needs to consider.

Another concern is that the bill would change all references to “health and safety officers” to “the minister” and allow the minister to delegate her powers to anyone she deems qualified. The current health and safety officers are neutral, trained, and specialized. They have the authority to monitor workplaces and issue directions. They help make sure employers take their responsibilities seriously and don't cut corners that could inadvertently harm their workers. With the new provisions, they could be replaced with ad hoc private entrepreneurs. These entrepreneurs would be dependent on the government for their next contract and would be reluctant to issue a direction against it. There is very strong evidence that actual citations and penalties reduce the frequency or severity of injuries in the workplace.

● (1550)

In the last several years, the ratio of employees to federal inspectors has increased dramatically as the number of inspectors has steadily been reduced. In 2005, the ratio of employees to federal inspectors was 6,607:1. In 2007, it was 8,057:1.

Finally, I want to say a word about virtual inspections. Clause 212 of Bill C-4 will allow the minister to electronically administer or enforce the provisions of the code.

Let's put this in context. We've steadily lost health and safety officers across the country. There are more demands for intervention, and the officers have new administrative burdens and pressure from management to do the work from their desks to save travel dollars.

Realistically, how can an officer investigate a safety complaint without meeting with the parties in the workplace to assess the circumstances? Where is the data that shows replacing a visual inspection with a virtual inspection won't lead to an increase in injuries or loss of life on the job.

In conclusion, we ask that the proposed changes to the Canada Labour Code be withdrawn from Bill C-4. Any proposed changes should be subject to thorough tripartite consultation before any legislation is introduced.

Thank you.

The Chair: Thank you, sir.

We'll now move to Mr. Kingston.

Mr. Bob Kingston (National President, Agriculture Union): My focus will be on the presentation that was done on the 19th. I believe that this committee and the minister have been ill-served by some of the information that has been coming out about its shortcomings.

What you heard from the department was incomplete, would be the politest way I can say it. These are not just my opinions; these are facts. You can verify every one of them yourself.

First, on the right to refuse being unchanged, it is still there. As was already referenced, the minister now has the right in the proposed amendments to dismiss without investigation. That is simply unheard of in any jurisdiction. This is a first, and it's a shocking first.

You can find that on page 180 of Bill C-4 in subclause182—

The Chair: I understood you were representing a different group. I have to stop you, and I apologize for that. Perhaps during questions we could allow you to elaborate—

Mr. Bob Kingston: I thought I was getting a gift there.

Thanks.

The Chair: I made an error. I accept my error. I had it on my list that you were representing a different organization and I apologize for that misinformation.

We're going to move on to Mr. Beckett or Mr. Farrell who will be doing the presentation, or both.

Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)): We'll be sharing the presentation, and I'll start.

The Chair: Okay, then go ahead, Mr. Farrell.

Mr. John Farrell: Thank you, Chair, and members of the committee, for allowing us to address you today regarding Bill C-4.

My name is John Farrell, and I'm the executive director of FETCO. I'm accompanied by John Beckett, who is the vice-president of training, safety and recruitment for the B.C. Maritime Employers Association, and the chairman of the FETCO occupational health and safety committee. He is also the employer spokesperson on employment and social development Canada's regulatory review committee, and a member of the council of governors of the Canadian Centre for Occupational Health and Safety.

FETCO consists of most of the major federally regulated employers in transportation and communications and represents 450,000 employees in the federal jurisdiction.

FETCO first became aware of the proposed changes to part II of the Canada Labour Code after Bill C-4 was introduced in the House of Commons. We attended a meeting of ESDC's regulatory review committee. The regulatory review committee is a tripartite process based on a consultative model and allows both employers and labour representatives to provide expertise and guidance to the labour program with the objective of continually improving health and safety in federal workplaces.

FETCO supports the proposed changes because they strengthen the internal responsibility system, improve the overall efficiency and management of health and safety—they have safety officers in the field—and will strengthen the role of health and safety committees.

We'll now look at each of these components of the proposed legislation in more detail. I'll turn over that responsibility to John Beckett.

● (1555)

Mr. John Beckett (Chairman, Occupational Health and Safety Committee, Vice-President, British Columbia Maritime Employers Association, Federally Regulated Employers - Transportation and Communications (FETCO)): Thank you.

I going to start with strengthening the internal responsibility system. The legal duties and responsibilities of employers, supervisors, and workers overlap and complement each other in the pursuit of the highest possible health and safety outcomes. Together they create what's known as the internal responsibility system. This concept is as fundamental in health and safety law as is the concept of due diligence. The internal responsibility system is a key component of a well-functioning occupational health and safety system that exists to ensure that workers are safe and their health is protected.

Inherent in the legislative system are mechanisms for workplace parties to resolve issues. Those mechanisms include shared rights and responsibilities. Employers are required to provide a safe workplace, and workers have rights to know, rights to participate, and rights to refuse dangerous work. Most importantly, the right to participate requires workers to do their utmost to ensure that the highest possible standards of health and safety are maintained in the context of each unique workplace.

Also inherent are engagement mechanisms for resolving issues as they arise. This is a shared responsibility of employers, employees, and the joint health and safety committees or the health and safety representatives.

Bill C-4 would improve the internal responsibility system. The employer and employee, and workplace safety representatives and health and safety committees, are required to work together to resolve issues at the workplace without the need for intervention of government-appointed health and safety officers. The primary mechanism to resolve workplace health and safety issues has always been the health and safety committee. Canadian employers and unions have invested heavily in the training and processes to ensure that health and safety committees are effective. Bill C-4 strengthens the role by requiring employers to engage both the employer and employee members in the assessment and resolution of unsafe work and work refusals.

I now turn to the changes to the definition of danger. The definition of danger is changed in Bill C-4 to “an imminent or serious threat to the life or health of a person”. The definition does not diminish the right of employees to refuse unsafe work, nor will it diminish protection provided by the Canada Labour Code.

The current broad definition invites an assessment of speculative risk based on potential hazards for future activities that inevitably contribute to unnecessary work refusals. Speculation about unsafe conditions that do not pose an imminent or serious danger should be resolved by the workplace parties through the health and safety committees without the need to exercise the right to refuse or government intervention.

Now, refusing dangerous work is not something either party takes lightly. The current process is a three-step process that involves the workplace parties. This process is enhanced in Bill C-4 by requiring written documentation by the employer, and it enhances the role of the health and safety committee in resolving work refusals. You have been given a slide that explains the revised system and how it would work by comparing the existing and proposed processes. I'd be happy to review that during the question period, if asked.

The first step in the process to resolve or refuse requires the workers to contact their supervisor and indicate their concerns. The majority of refusals are resolved at this stage. If not, the next step engages the health and safety committee to do further investigations and make recommendations. This is the mechanism in the internal responsibility system designed to have workplace parties resolve issues. The proper role of government is to intervene only when the internal responsibility system fails. This has not been the case in the federal sector. Too often, labour affairs officers have been injected into the process too early, which undermines the responsibility of employers, employees, and their representatives to seek appropriate solutions together.

The workplace parties are better equipped to assess and manage these risks than health and safety officers, because the assessment of health and safety risks often requires specific expertise and technical knowledge about sector-specific workplaces. There are many examples of early inappropriate intervention by health and safety officers that diminish the effectiveness of the federal health and safety regulatory system.

Asking government officials to intervene in speculative risks is asking them to become experts on issues where evidence is often minimal or non-existent. That is the responsibility of the workplace parties.

In the provincial jurisdictions, the ministers of labour and workers compensation boards have developed protocols that are similar to those proposed in Bill C-4 to ensure that there is minimal interference in the workplace health and safety internal responsibility system. Danger is not defined in most provincial jurisdictions. Where it is defined, it is defined narrowly as an imminent danger to life and health.

● (1600)

The Chair: You have approximately a minute left, sir.

Mr. John Beckett: Okay.

My last comments are around improving the performance of the government system. The changes proposed in Bill C-4 remove the responsibility formerly delegated to health and safety officers and gives that responsibility to the minister.

FETCO supports the provisions in the proposed legislation that are designed to improve the efficiency and allocation of resources by the Minister of Labour. Those positive measures include allowing the combining of identical or substantially similar health and safety matters, and allowing the minister to rely on the findings of previous investigations.

Mr. John Farrell: There is one final note that's important when it comes to changing labour legislation and drafting and implementing regulations and guidance documents regarding the proper implementation and operation of such legislation and regulations. The opportunity for the workplace stakeholders to provide advanced guidance and advice will be helpful and appreciated. FETCO supports pre-legislative consultation, where practical, to the greatest extent possible.

Thank you very much for your time.

The Chair: Thank you so much.

I appreciate the brevity of all of your remarks. We're right on time, even though I messed up in the middle with Mr. Kingston. We're right on schedule.

I would remind members that our rounds were agreed upon in our routine orders at five minutes in this case.

We'll start with Madam Sims from the NDP for five minutes.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much.

I want to thank all our guests for coming at such short notice to give testimony and to educate us on many of these issues.

My first question was going to be who has been consulted, and it's very obvious that nobody has been consulted, neither the employer nor the employees. This legislation didn't go anywhere. As a matter of fact, I was reading this document today which says that officials with the Treasury Board told the Commons finance committee yesterday that they could not recall any consultation with anyone outside government in rewriting the Canada Labour Code and the Public Service Labour Relations Act. For me, that in itself is a huge shocker, that when you have something like this, nobody was consulted.

The other thing is that I know health and safety and how it works, having come from a system and knowing it well, and one of the things that has always worked with health and safety is the collaboration and consultation between employers and employee representatives. It has always been in a workplace very much a collaborative thing.

My first question is for Mr. Farrell of FETCO.

Do you think that employer and worker representatives should have been consulted prior to the law being amended?

Mr. John Farrell: FETCO believes strongly that pre-legislative consultation makes eminent sense in changing labour legislation.

Ms. Jinny Jogindera Sims: Thank you.

We're also hearing a lot about the 80%, and you know people love those numbers, that 80% of work refusals were denied. We heard very clearly from the officials that they did not track nor do they have data for any compliance tools that were used, any resolutions that were used, long before it got to the finding, so to speak. Any directions or assurances of voluntary compliance, we don't have those. Really, this 80% number seems a bit disingenuous to me when I look at it.

Even if it's true, let's say, the important thing to acknowledge here is that one in five claims were still valid, and yet we are changing the definition of danger and many other things.

My question is fairly simple. After all, governments produce bills for a reason. Will this piece of legislation make Canadian workers safer? I just want a yes or no answer as I go through.

I'll start with Mr. Farrell.

Mr. John Beckett: Unfortunately, you're not going to get a yes or no answer. The question is whether it will it make it safer.

Ms. Jinny Jogindera Sims: Okay, I'm sorry, but I only have five minutes.

Mr. John Beckett: The other side of that is whether it will make it more dangerous, and the answer is no to that.

Ms. Jinny Jogindera Sims: Okay.

Mr. Kingston.

Mr. Bob Kingston: It absolutely will make it more dangerous.

Ms. Jinny Jogindera Sims: Thank you.

Mr. Aylward.

Mr. Chris Aylward: Absolutely.

Prof. Katherine Lippel: More dangerous.

Ms. Jinny Jogindera Sims: Mr. Yussuff.

Mr. Hassan Yussuff: Dangerous.

Ms. Jinny Jogindera Sims: I'm sorry, sir, I can't see your name from here.

Mr. Jeff Bennie (Health and Safety Committee Member, Canadian Labour Congress): Yes, it's going to make it more dangerous.

● (1605)

Ms. Jinny Jogindera Sims: Let me ask another question. I'm going to aim this at Katherine, if you don't mind. I'm going to talk about the reproductive issues you mentioned. What are the potential impacts of these changes on women of child-bearing years, as well as on men during their reproductive years?

Prof. Katherine Lippel: I don't want to get into a legal definition of the protective reassignment provisions in the Canada Labour Code, which are a lot weaker already than the ones that exist in Quebec. I don't want to get into the details of that.

What's clear is that if the hazard is in relation to a pregnancy and the worker has the right to ask for reassignment under the legislation, is that worker going to get more easily reassigned with a more difficult definition of danger? I don't think so. For men, it's manifest that they're no longer covered, right? It's really easy to see that reproductive hazards for men would no longer be covered under this definition of danger. For women, there are provisions for requesting reassignment without pay. They're not necessarily very....

Ms. Jinny Jogindera Sims: Okay, thank you.

The Chair: You have 10 seconds.

Ms. Jinny Jogindera Sims: The other thing is that when I look at the flow chart that has been drawn here and the information that was given to us yesterday, it seems that the employer is the only person who gets to make a report to the minister, and the employee has no say in that at all. Once again—

The Chair: I'm sorry, but that's the end of your time.

Ms. Jinny Jogindera Sims: Five minutes flies.

The Chair: Yes, it does, and we're over on the time.

On to Ms. McLeod from the Conservative Party.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): I have a couple of comments and then certainly I want to get into my questions. As you indicate, five minutes goes by very quickly.

I do understand, contrary to what was presented here, that there are further avenues to appeal. The avenues, as the person continues to have the right to refuse work, actually go right up to the Federal Court of Appeal, so I understand there are many steps.

Because we started to talk about the chart, what I want to get into.... I was actually stunned to find out that there were no requirements for any kind of written process. Everyone must have written checks and balances in terms of how they deal with things.

Perhaps, Mr. Beckett, you could walk us through the chart. I know that our government doesn't want to add a lot of red tape and bureaucracy, but I was stunned to find out that there was previously no requirement for documentation.

Mr. John Beckett: The chart you have in front of you is laid out in basically the old process versus the proposed new process. The old process is essentially in black. It starts off the same, regardless. The employee believes there is a danger to a machine, a condition, or an activity. They talk to the employer, and usually that's their supervisor. The employer investigates it with the employee. If the employer agrees that there is a danger, things are fixed and people go back to work.

If there is no agreement, then there is a referral to the safety committee, or there is safety committee involvement in the investigation at that point. Obviously, if there is an agreement that there is a danger, then that is fixed. If there is still disagreement, then it's the employer who calls the labour affairs officer. Employees never had the right to phone the labour affairs officer directly; it was always the employer who had to make the referral.

Under the new process, basically four steps have been added to enhance or improve the internal responsibility system or the rigour in the process, and it also improves the engagement with health and safety committees. At the first step something has to be given in writing to the employee on the first decision by the employer if they say there is no danger. The committee employer and employee rep must be engaged and they must write a report to the employer. The employer has an opportunity to give new information, if it's available. At the end of that process, the employer then writes to the employee. If there is still no agreement, the employer writes to the employee saying that there is no agreement, and then the employer would phone the labour affairs officers.

Mrs. Cathy McLeod: Great, thank you.

Does this reduce the protection for workers?

Mr. John Beckett: It doesn't.

Mrs. Cathy McLeod: The employee has the right to refuse work throughout this process.

Mr. John Beckett: Nothing has changed on the employee's rights or obligations.

Mrs. Cathy McLeod: Okay.

There has been a lot of talk about the 80%, and as many people are aware, the legislation actually precludes public disclosure of a lot of these issues.

Could you speak in more general terms about what your experience is with refusals?

Mr. John Beckett: Well, I've been a health and safety professional for about 25 years. I spent up until the year 2000 in the provincial system, and since 2000 I've been in the federal system. I can say categorically that in times of tension in workplaces, this refusal process, frankly, gets abused by both parties, but it does get used as a method to draw attention to things that may not normally be attended to.

By and large, certainly in the industry I am in now, I would say that at least half, if not more, of the refusals that I deal with today, which was much more when we didn't have an eight-year collective agreement, were frivolous. They were about things other than safety.

● (1610)

Mrs. Cathy McLeod: Thank you.

It's unfortunate that we don't have a lot of time.

I'm very used to a delegation system. I worked in a regulatory environment for a short time in my career. At that time I was a generalist and certainly capable of doing much of the work, but I found there were times when we needed someone who had specialty expertise, and really, the delegation authority was very helpful.

We've heard people express concerns, but could you talk a little bit about how delegation might actually be very positive?

The Chair: Make it short, please.

Mr. John Beckett: Sure.

We support the changes to allow the minister to apply resources as appropriate. Health and safety officers all have a general health and safety background, but they're not experts on everything, yet there are experts on different things within the service. The ability of the minister to assign officers with particular expertise to particular problems is beneficial from our perspective.

The Chair: Thank you, Mr. Beckett. You were right on the five minutes.

Now we go to Mr. Cuzner, from the Liberal Party.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): Thanks very much, Mr. Chair.

Thanks for the testimony from the witnesses today.

On Tuesday, Ms. Baxter from the department read into the record that changes were based on "feedback from time to time from our stakeholders" and "our regular discussions with stakeholders". However, from what I'm hearing today from FETCO, you guys were not consulted.

Mr. John Farrell: We had no consultation about this bill.

Mr. Rodger Cuzner: Okay. Thanks.

PSAC? No.

CLC? No.

Canada's leading expert in occupational health and safety, you must have been consulted.

No? Okay.

Do any of you know anybody who was consulted?

No? Nobody was consulted? Okay, thanks.

The last time part II of the code was changed was in 2000. That was under a tripartite consensus process.

Don Brazier, your predecessor at that time, in 2000, read into the record, and I will read it:

> To attempt to obtain through other means changes a stakeholder could not obtain through the [tripartite] process itself would upset the balance that has been reached, seriously undermine the process, and probably ensure that the consensus process could not be used in the future.

Why is FETCO supporting these changes now?

Mr. John Farrell: FETCO supports a tripartite process to review labour legislation. We are supporting certain...the provisions of this legislation, which we happen to agree with. The horse is out of the barn, and we're asked to respond to Bill C-4.

Mr. Rodger Cuzner: Is this the new now? Is this how we should be changing the Canada Labour Code now, one-offing like this? That hasn't been the belief of FETCO in the past.

Mr. John Farrell: Our view has always been that we should engage in tripartite conversations with our stakeholders.

Mr. Rodger Cuzner: Ms. Baxter also said in testimony the other day, "as I mentioned, we have been looking at our administrative data with regard to refusals to work, and this information has been provided to our stakeholders."

Has FETCO been supplied with any of that information on the data?

Mr. John Farrell: No.

Mr. John Beckett: Yes, we have. We asked for specific information which was given to both parties on where the inspections had occurred and the danger, no danger. That has been provided to both parties.

Mr. Rodger Cuzner: Is PSAC aware of that?

Mr. Chris Aylward: No.

Mr. Rodger Cuzner: Is CLC aware of that?

Mr. Hassan Yussuff: Yes.

Mr. Rodger Cuzner: Okay, so you did have that.

What we found was that the information on the 80% was very vague. Obviously, your testimony today said that the 80% is somewhat of a red herring.

You might want to expand on that a little bit, Ms. Lippel.

● (1615)

Prof. Katherine Lippel: Yes.

Well, it depends; 80% of what? There were contradictory things in the testimony, but it's either of appeals or of inspections and appeals. In any case, the majority of these cases, as I believe FETCO has said, are settled before the inspectors get there; therefore, all those success stories don't get counted. All the justified refusals aren't counted in determining the 80%.

Mr. Rodger Cuzner: That seemed to be missing in the testimony of the officials.

The other information that we had, the stats we were working from the other day when the officials were here, dealt with the number of inspectors. Maybe PSAC can comment on this. From our numbers, we thought that eight years ago they were at around 125 or 130 or more and they're down to 85 now.

Could you guys give us your reflection as to how you see the numbers over the last number of years?

Mr. Bob Kingston: Sure. According to our data, and this comes from Treasury Board, by the way, so I'm quite surprised that you got the answers you did the other day.

According to our data, in 2004 there were 147; in 2005, 151; in 2006, 140; in 2007, 125. For the three-year cycle from 2004 to 2006, the number fluctuated between 140 and 150. In 2007 it dropped to 125, and as you heard on Tuesday, it now is down to 80. So to say there has been no change was a bit of a misleading statement at best.

I can also fill you in on more of the 80%, if you're interested.

Mr. Rodger Cuzner: Do we have....?

The Chair: You can have 10 seconds' worth.

Mr. Rodger Cuzner: The officers have actually reviewed all the cases they are referring to, and they say the number is exactly the opposite, or pretty close to it. In fact 75% of all refusals have resulted in documented enforcement actions. If I had more than 10 seconds, I could—

The Chair: That completes the first round.

Now we move back to Madam Sims. I believe you're sharing your time with Monsieur Tremblay.

Ms. Jinny Jogindera Sims: Yes, we are sharing the time. Thank you very much.

My question goes back to the discretionary powers of the minister. We have seen over the last couple of years this government putting more and more power in the hands of their ministers and therefore escaping what I would call parliamentary oversight either at committee or in the Parliament, and being able to make many changes.

This one really rang alarm bells for me, because it seemed to take away from the independence of the inspectors.

What kind of impact is this new discretionary power of the minister and the minister's being the ultimate arbitrator in this case, without hearing from the worker, by the way, because he's only going to hear from the employer, going to have on health and safety enforcement?

I'll start with you, Hassan, and then I'll go to Katherine. Give short answers, please.

Mr. Hassan Yussuff: I guess at this point, given these new provisions that are being added to the code, our observation is that clearly these changes have been made to ensure that the inspectorate will not be utilized as frequently to deal with situations in which a right to refuse has been invoked in the workplace. This would obviously create a bit of a chill. You can invoke it, but at that point, if the minister chooses to respond and at her discretion to dispatch an inspector, it will be very infrequent, because the government is making argument, obviously, that there is a better use of these resources and that the parties should try to resolve these matters by themselves before asking the government to interfere in any internal matters.

It's important to distinguish places, and I think Katherine alluded to this. Where you have strong and successful health and safety committees with both the competence and the training and a capacity to act properly, yes, it might be very wise, but there are many workplaces that are not unionized and where the workplace committee doesn't have the capacity or the training. Then you are at the discretion of the government as to whether or not they will intervene.

I think workers' health will be further eroded, given the new discretion that the minister has to make a decision as to whether or not she is going to intervene to dispatch an inspector.

Ms. Jinny Jogindera Sims: Katherine, give a short answer, because I want to give Jonathan—

Prof. Katherine Lippel: Very briefly, if I were a labour inspector, I would be very careful before I found that a worker was justified in refusing, if my job depended on whether I found something that was going to displease the minister.

Ms. Jinny Jogindera Sims: That's pleasing, rather than health enforcement.

I'll turn it over to you, Jonathan.

[*Translation*]

Mr. Jonathan Tremblay (Montmorency—Charlevoix—Haute-Côte-Nord, NDP): Thank you.

What are the consequences of withdrawing from the tripartite process, Mr. Yussuff and Mr. Bennie?

● (1620)

[*English*]

Mr. Hassan Yussuff: Hang on. The translation is not coming.

[*Translation*]

Mr. Jonathan Tremblay: Mr. Yussuff and Mr. Bennie, can you tell me what the consequences of ending the tripartite process will be?

[*English*]

Mr. Hassan Yussuff: I think my colleagues at the end of the table will speak candidly to this reality. We have had what I think is the most robust tripartite system in the federal jurisdiction. The code as it currently stands came about because of the collaboration that FETCO and the CLC and the government of the day had participated in.

For the government to depart from this I think fundamentally alters the balance of the relationship as to how we improve or even deal with situations in which there need to be amendments to legislation.

Had the government brought this issue before the tripartite committee and said, “Listen folks, we have a problem, and we think you need to figure this out and give us some advice as to how we are going to address it”, the process would, I think, have been very different, because the committee has always been consistent in its responsibility to try to find compromise, to figure out in what way we can perform.

I think this completely undermines it, and I'm at a bit of a loss to understand my colleague's saying that while in the history of our relationship we have worked to make this process a success, today through expediency we think the government is making a good decision, even though we've had no discussion among ourselves, much less a collaboration to say that this is absolutely crazy as a way to proceed.

The government recently went to the ILO to talk about how important this tripartite process was and the need for it to be relevant, especially in the federal jurisdiction.

[*Translation*]

Mr. Jonathan Tremblay: Do all of the witnesses share that opinion?

[*English*]

The Chair: You have about 30 seconds.

[*Translation*]

Mr. Jonathan Tremblay: Thank you, Mr. Chair.

Regarding the refusal to work, do people who believe that inhaling a product that could be dangerous to their health, for instance, lose that right of refusal with this amendment to the act?

Prof. Katherine Lippel: I will answer you briefly, since you only have 30 seconds left.

The text is so ambiguous that we don't know the answer. That is the problem. If people don't know, they are not going to exercise their right to refuse.

[*English*]

The Chair: Thank you for that. That ends your five-plus minutes, because of the time it took to get the translation going.

It's on to Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair, and I'm going to share my time with Mr. Armstrong.

One of the interesting issues that I heard in the opening statement was that the ratio of health and safety officers was 1:6,000, and now it's 1:8,000. At first blush, you would assume that workers' health and safety are at risk because of those numbers, but actually, if you look at a graph of where we've gone with work-related injuries in Canada, we've gone from a high of about 50 in 1990, down to 14.7 today. Therefore, it's not a direct relationship with the health and safety officers and the numbers of them, but more the consultations between the supervisor-employer and the employee who has worked. I think we heard that from the testimony of Mr. Beckett.

We seem to be stuck on the process here, but we're discussing the bill. I can understand there is a process that has been used in the past.

Mr. Beckett, have you ever said to a health and safety officer or to the department, “We're having a little bit of a challenge with the number of cases with regard to interpretations of danger that have maybe caused a lot of anxiety in the workplace, and maybe we need to tighten that up a little bit or there needs to be more clarification”? Have you ever said that to a department official who is doing an inspection or whatever, just to—

Mr. John Beckett: No. The short answer is no.

We have not had any consultation or had this issue arise in any of our conversations. Certainly, as it relates to the officers, in the carriage of their duties, I have never said to an officer that maybe they are interpreting the definition wrong. They have a job to do. We ask them to do it.

Mr. Colin Mayes: You feel that the right of the worker to refuse dangerous work has not been affected by the changes that are proposed in—

Mr. John Beckett: No. It's interesting you refer to the chart. The chart actually refers to all work in Canada, where the injury rate has gone from 50 per 1,000 workers to 14.7 per 1,000 workers. The majority of that work is in the provincial jurisdiction, where the proposals in Bill C-4 exist already.

I take a little bit of faith in the fact that the general responsibility system is working well in most Canadian workplaces, which is no interference with government officials, so that these changes, from my perspective, will have no negative impact on the rights of workers to refuse work.

● (1625)

Mr. Colin Mayes: Thank you.

I'll turn it over to Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you.

Mr. Beckett, you said you've been working under the federal jurisdiction guided by the Canada Labour Code for, I think, 13 years.

Mr. John Beckett: Correct.

Mr. Scott Armstrong: I'm going to read from section 132 of the code. I just want you to confirm whether I'm accurate in saying this is actually a section in that code:

> ...an employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the foetus or child.

She can cease that if she believes those things can pose a risk or a threat. Is that accurate?

Mr. John Beckett: That is accurate.

Mr. Scott Armstrong: Dr. Lippel, is that you're understanding too? Am I accurate in saying that is part of the code?

Prof. Katherine Lippel: That's correct.

Mr. Scott Armstrong: There is protection for women who are nursing or who are pregnant under the code in another section. That's there in black and white.

Is that accurate?

Mr. John Beckett: It's accurate.

Mr. Scott Armstrong: Okay, just let me ask a question—

Prof. Katherine Lippel: I want to clarify that.

Mr. Scott Armstrong: Well, I'll come back.

I do have a question now for Mr. Aylward. Your president has been out in the media creating a lot of confusion with misleading information about new amendments that are in this legislation, particularly ones relating to pregnant or nursing mothers. She has said they will lose their right to refuse work, so I find this extremely troubling when there's a section 132, which clearly states that they can refuse work if they are nursing or pregnant, if they believe there's a threat to the fetus or the child, or themselves.

Can you explain to me why your president is out saying those things, when there's clearly protection in the Canada Labour Code under section 132?

Mr. Chris Aylward: I'll share my time with Mr. Kingston.

Mr. Bob Kingston: First of all, our president referred to protection not only for pregnant and nursing women but also for young workers trying to start a family.

In terms of the implications of the changes here and how they would affect a pregnant woman under these certain circumstances, is in the definition of danger. When you remove the part about long-term consequences, even aside from the part about reproductive organs, and you put the word “imminent” in, it means short term. It means immediate. The problem with a refusal under section 132 is that it requires a medical evaluation, following which the protection ends.

The determination by the medical professionals, by people in the workplace, in terms of finding alternative work, will be affected by the definition of danger that emerges and the procedures around it, and those things are changing.

When you combine that with the threat that a person who puts up their hand can now end up getting fired, if in fact there is an investigation.... That never actually proceeds, because the minister declares it frivolous or vexatious—

The Chair: That's the end of this round. Sorry, but I'm going to have to end this part of our meeting.

I want to thank all the witnesses for taking time to be here today and to answer the questions as presented.

The committee will break for a couple of minutes.

[*Proceedings continue in camera*]