

**KEVIN O'REILLY—MLA FRAME LAKE**  
**Bill 20, An Act to Amend the Employment Standards Act**

**March 12, 2021**

**MR. O'REILLY:** Thanks, Madam Chair. I, too, would like to thank the committee for allowing me to sit in on their proceedings with regard to Bill 20. As the chair said, the Employment Standards Act is almost kind of like a sacred piece of legislation where you try to balance the rights and interests of workers and employers. I think it does generally reach that kind of proper balance. I think that the committee worked very hard to improve particularly the group termination notice provisions of the bill that was brought forward. It really wasn't clear who would initiate the notice and where it would go and how employees would find out about it and so on. I think they made some great strides in improving much of that. I want to thank them for their efforts at doing that.

I'm still quite concerned with the emergency leave provisions in the bill. It is unpaid leave, and right now, with the federal government, that unpaid really is paid leave because you can apply for federal benefits. When the federal government ends those benefits, if we were in another emergency situation, there would be no pay for someone who needs to take emergency leave. This issue was raised by the Status of Women in their submission, and I think the issue is that it really wouldn't create any kind of an incentive for people to self-isolate if there was a pandemic going on. You would have people that would be going to work sick and possibly spreading things and so on. That issue has not been addressed in the bill. I know there is a recommendation that is going to come forward shortly that will attempt to try to deal with that but in any event that, I think, remains a piece of unfinished business.

The one area that I'm most concerned about is the group termination notice provision. That is because, at the end of the day, if and when these changes are adopted, workers will lose weeks of paid work. I think that is indisputable, and I will ask the Minister for his interpretation. Workers will lose weeks of paid work if this goes ahead as is. In any event, I do have some further comments and questions for the Minister when we get into actually reviewing the bill, and of course, I'm going to be bringing forward a couple of relatively small amendments to try to even up the balancing, I think, a little bit better to improve the bill a little bit further. Again, I want to thank the committee for its hard work. This is a difficult, complex set of changes that had been proposed, and I think that the committee did a good job at trying to reach a better balance. Thanks, Madam Chair.

(...)

COMMITTEE MOTION 89-19(2):  
COMMITTEE REPORT 12-19(2) – STANDING COMMITTEE ON SOCIAL  
DEVELOPMENT - REPORT ON THE REVIEW OF BILL 20: AN ACT TO AMEND THE  
EMPLOYMENT STANDARDS ACT – PUBLIC CONSULTATION ON PRESCRIBED  
EMERGENCY PROVISIONS, CARRIED

**MS. CLEVELAND:** Thank you very much, Madam Chair. I move that this committee recommends that the Department of Education, Culture and Employment undertake

public consultation to develop prescribed emergency provisions, including those that have already been defined in relevant sections of Bill 20. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. The motion is in order. To the motion. Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. The way the bill reads, the Minister does have the ability to bring forward regulations to further describe, or prescribe, I guess, in what situations unpaid emergency leave would be made available to employees. The Union of Northern Workers, in its written submission, suggested that, if and when these regulations are made, it would be a good idea to allow for a period of some form of public consultation. That's consistent with a lot of things that we heard in the last Assembly about interest in public participation and public comment on the development of regulations, so I do support this motion. I thank the Union of Northern Workers for bringing it forward, and I hope that the Minister will accept this and find a way for the public to have some involvement in finding in what situations this emergency leave might continue after this pandemic. Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. To the motion.

**SOME HON. MEMBERS:** Question.

**CHAIRPERSON (Ms. Semmler):** Question has been called. All those in favour? All those opposed? Abstentions? The motion is carried.

---Carried

Member for Kam Lake.

COMMITTEE MOTION 90-19(2):

COMMITTEE REPORT 12-19(2) – STANDING COMMITTEE ON SOCIAL DEVELOPMENT - REPORT ON THE REVIEW OF BILL 20: AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT – FINANCIAL RESOURCES FOR EMPLOYEES ON UNPAID EMERGENCY LEAVE, CARRIED

**MS. CLEVELAND:** Thank you very much, Madam Chair. I move that this committee recommends that the Department of Education, Culture and Employment undertake a review of the territorial government programs and policies to allow financial resources to be made available while an employee is required to take unpaid emergency leave. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. The motion is in order. To the motion. Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. Yes. This issue was raised in written submissions from the Status of Women Council and the Union of Northern Workers. As I mentioned earlier, it is good that people will have access to unpaid emergency leave. What that means is that, if they have to go and self-isolate, an employer has to allow them to take the time off. It's unpaid, but their job is kept for them so that they can return to a job. It's not just the individual employee; it can be a member of their family who might need care, and so on. I think that's a good thing to do, and in fact, we are actually

required to do it, if you read the plain-language version of the bill, because we have accepted through the Safe Restart Program that the federal government has. We were required to make this change to our legislation, so that's a good thing.

The downside is that, as I said earlier, there is no incentive for someone to take the unpaid leave. Some people are just not going to even be able to afford to take unpaid leave, so there is no incentive for someone to self-isolate and stop a pandemic, necessarily. Thank goodness we have the federal funding now, during the pandemic. When that's finished, I'm not sure that this is going to help, and that's, I think, precisely what the Status of Women Council said. We need to find a way to ensure that, if we want people to behave correctly and isolate and so on, there has to be a bit of an incentive to help them do that. They have to be able to continue to make some kind of a living. How that gets covered is the essence of this motion. Is it something that should be covered by the employer, should it be covered by government, or a combination of those? That's an interesting question, and I think that's what is at the heart of this motion, is to consider whether we can find ways to support people who need to take emergency leave and how we're going to pay for that. So I would encourage that the Cabinet respond positively to this motion and investigate ways to make this unpaid emergency leave actually paid into the future. Thanks, Madam Chair.

(...)

**CHAIRPERSON (Ms. Semmler):** Thank you, Member. To the motion.

**SOME HON. MEMBERS:** Question.

**CHAIRPERSON (Ms. Semmler):** Question has been called. All those in favour? All those opposed? Abstentions? The motion is carried.

---Carried

Member for Kam Lake.

COMMITTEE MOTION 91-19(2):  
COMMITTEE REPORT 12-19(2) – STANDING COMMITTEE ON SOCIAL  
DEVELOPMENT - REPORT ON THE REVIEW OF BILL 20: AN ACT TO AMEND THE  
EMPLOYMENT STANDARDS ACT – GOVERNMENT RESPONSE TO  
RECOMMENDATIONS, CARRIED

**MS. CLEVELAND:** Thank you, Madam Chair. I move that this committee recommends that the Government of the Northwest Territories provide a response to the recommendations contained in this report within 120 days. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. The motion is in order. To the motion.

**SOME HON. MEMBERS:** Question.

**CHAIRPERSON (Ms. Semmler):** Question has been called. All those in favour? All those opposed? Abstentions? The motion is carried.

---Carried

Thank you, committee. Do you agree that you have concluded consideration of Committee Report 12-19(2), Report on the Review of Bill 20, An Act to Amend the Employment Standards Act?

**SOME HON. MEMBERS:** Agreed.

(...)

---SHORT RECESS

**CHAIRPERSON (Ms. Semmler):** I now call Committee of the Whole back to order. Committee, we have agreed to consider Bill 20, An Act to Amend the Employment Standards Act. I will ask the Minister of Education, Culture and Employment to introduce the bill.

**HON. R.J. SIMPSON:** Thank you, Madam Chair. I am here today to present Bill 20, An Act to Amend the Employment Standards Act. I wish to thank the Standing Committee on Social Development for its thoughtful review and collaboration on this bill. Thanks to the valuable insight of the committee and its staff, in cooperation with departmental representatives, the bill as amended achieves a desired balance between increased public transparency and the operational requirements of the Employment Standards Office.

This bill seeks to amend the Employment Standards Act to include two provisions that will provide protection to NWT workers and flexibility to employers during the COVID-19 pandemic and any future emergency. The first provision, emergency leave, provides job protection to NWT workers by allowing workers to access unpaid leave when they are unable to perform their duties because of an emergency, such as the ongoing public health emergency. This provision will not only encourage workers to comply with public health best practices but will also allow the NWT to meet its commitments to the Government of Canada under the Safe Restart Agreement and allow NWT workers to access the recovery benefits under the Government of Canada's COVID-19 Response Measures Act.

The second provision will provide flexibility to NWT employers by including an exception to the requirement to provide notice of group termination, in line with the notice periods set out in the act, when an unforeseeable event or circumstance beyond an employer's control occurs that prevents the employer from respecting the notice period in the act. Employers will still be required to provide notice of group termination to the employment standards officer and any applicable union as soon as possible, and employees will retain their entitlements to individual termination notice or pay in lieu of notice.

I am pleased to bring forward these amendments that will both strengthen worker protection and provide flexibility for employers and which are consistent with actions taken by other jurisdictions in response to the pandemic. This concludes my opening remarks, and I would be pleased to answer any questions that Members may have regarding Bill 20. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Minister. I will now turn to the chair of the Standing Committee on Social Development, the committee that considered the bill, for opening comments. Member for Kam Lake.

**MS. CLEVELAND:** Thank you, Madam Chair. Having just introduced Committee Report 12-19(2) a short time ago, I have no additional comments on Bill 20 at this time. Again, I wish to thank committee, the stakeholders that provided valuable feedback as well as all Regular Members who participated in the committee's review of this bill. Individual Members may have additional comments or questions at this time for the Minister. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister, would you like to bring witnesses into the Chamber?

**HON. R.J. SIMPSON:** Yes, I would.

**CHAIRPERSON (Ms. Semmler):** Thank you. Sergeant-at-Arms, please escort the witnesses into the Chamber. Minister, please introduce your witnesses.

**HON. R.J. SIMPSON:** Thank you, Madam Chair. Today, we have Ms. Haley Mathisen, manager, employment standards, on your left, and Ms. Laura Jeffrey, legislative counsel with the Department of Justice, on the right. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, and welcome. I will now open the floor to general comments on Bill 20. Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. I'm still concerned about the group termination notice provisions in the bill, but I would like to ask the Minister whether there were any public consultations in preparing the bill. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. No.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member for Frame Lake.

**MR. O'REILLY:** Thanks. Can the Minister provide an explanation as to why there was no public consultation in preparing the bill? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. In response to the pandemic, the department decided to implement measures that exist in virtually all other jurisdictions to assist residents and businesses. It wasn't something that required extensive public consultation at the time because these measures are fairly clear-cut across Canada, and time was of the essence, as well, despite the fact that I know that this bill seems to be coming in late, considering the situation. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. I was going to make the same comment, that the pandemic has been going on for a year, and the bill arrived maybe a month or two ago. It looks to me like there would have been an opportunity for public consultation,

certainly with employers and employees, in some ways. I want to turn, though, to the group termination notice provisions. It looks like they have been in place in the current legislation since 2008. I am just wondering why they are being changed now. Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you, Madam Chair. During the pandemic, we saw a lot of businesses disrupted. We saw the mines halt operations with really no notice. We saw international flights cancelled. Tourists stopped coming into the territory. We realized there were employers who were in situations, who, due to those monumental unforeseen situations, would find themselves in violation of the act at no fault of their own. We didn't want a situation where there is a contractor up at the mines, and they have 50 employees, and that's their only contract, and the mine shuts down one day and says, "You send everyone home. We're done. We're not working." All of a sudden, that company would be in violation of this act if they had to lay everyone off because of that situation. That doesn't necessarily seem fair. We wanted to ensure that, in these very rare, unexpected, and exceptional circumstances, there was an opportunity for some fair dealing with those companies. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. How often do we track the number of group termination notices that are given under Section 41 of the act? Do we track that over time? Has it ever been really used before? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. I would like to hand this to Ms. Mathisen. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Ms. Mathisen.

**MS. MATHISEN:** Thank you Madam Chair. Our office doesn't typically track the number of group terminations that occur, but they do occur from time to time. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. Just to be really clear, was there a request from employers, individual companies, bigger employers, to make this change? Where is the impetus coming from? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. We received correspondence from, I guess you would say, an industry lobbyist group, if that is what the Member is referencing, but it was really the northern experience and the situation we found ourselves in that led to the inclusion of this. We often receive suggestions from lobbyists about what we should be doing in terms of our employment legislation, and it is not the case that it is just automatically implemented. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks. I appreciate the Minister's frankness there. I guess we were lobbied to make this change. I need to turn to the law clerk, Madam Chair, or I'll start with the Minister. I understand that, of course, there are individual termination provisions in the act and that people can actually get paid out. There are the group termination notice provisions, as well; people don't get paid out. However, if this is passed, it appears to me that some workers, if they work for a larger workplace with 20 or more employees, they could lose weeks of paid work as a result of a waiver being granted. Is that the Minister's interpretation of how this could affect employees? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** No, that is not my interpretation. This isn't an application process whereby a company thinks that perhaps they can lay off employees sooner by applying to the government. That is not how this works, at all. Employers will provide notice of group termination, and if they haven't provided adequate group termination, under the current act, they are in violation of the act. What this amendment would do would be to allow the government, the employment standards officer, to look at the situation surrounding that termination and determine whether or not the employer met all of the criteria in the act. If they did, then they would not be in violation of the act. However, any sort of individual notice of termination or pay in lieu of notice is governed by a completely different section of this act, and this does not affect individual employees' rights, at all. This is really an administrative section that involves an employer and the Employment Standards Office and, in applicable situations, trade unions, so this does not give companies the right to terminate employees sooner than they can now. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks. I'll try one more time maybe. Right now, there is no provision for a waiver in the legislation. This bill is about providing an opportunity for such a waiver, which would allow for the shortening of the group notice, a group termination notice period. If a waiver is accepted or ordered by an employment standards officer, employees will lose weeks of paid work. Is that not the case? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Minister.

**HON. R.J. SIMPSON:** That is not the case. Thank you.

**CHAIRPERSON (Ms. Semmler):** Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. I would like to seek the opinion of the law clerk on this, please, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** I think he's seeking the opinion of the law clerk.

**CHAIRPERSON (Ms. Semmler):** Okay. Mr. Clerk.

**DEPUTY LAW CLERK OF THE HOUSE (Mr. Kruger):** Thank you, Madam Chair. The act provides at Section 41(3) that no employer shall terminate the employment of any

employee for which a notice of termination is required before the required period of notice has expired. That provision of the act is remaining. It is unaffected by the bill, and the bill does not affect individual entitlement to severance or notice. Those are dealt with in a separate section of the act. However, insofar as Section 41(3) goes, that no employer shall terminate the employment before the required periods of notice has expired, what the bill would contemplate is that the employment standards officer would then have the ability to set the appropriate period of notice and that the employer would not be able to proceed with the group termination before the expiry of whatever that notice is determined to be.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks. I appreciate that. There is no waiver provision in the legislation as it stands now. This would provide a waiver which could conceivably, or would if the employment standards officer issues an order, shorten up the group notice time period. Thus, workers could lose weeks of paid leave. Is that a correct interpretation? That's for the law clerk. Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Law clerk.

**DEPUTY LAW CLERK OF THE HOUSE (Mr. Kruger):** Thank you, Madam Chair. It is possible that the employment standards officer could decide to reduce the period of notice to a period lower than what is currently in the act. That is correct.

**CHAIRPERSON (Ms. Semmler):** Thank you. Are there any other general comments? Member for Tu Nedhe-Wiilideh.

**MR. NORN:** Marsi cho, Madam Chair. Just listening to some of my comments to my colleague here and some of the opening remarks, there was mention that similar acts to this act are happening in other parts of the country. The question to the Minister is: has there been a cross-jurisdictional scan for this act? Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Member. Minister.

**HON. R.J. SIMPSON:** Yes, there has, and every jurisdiction other than the NWT and Nunavut have similar provisions to the group termination provision. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Minister. Member for Tu Nedhe-Wiilideh.

**MR. NORN:** No, nothing further. I just wanted to know that. Thank you.

**CHAIRPERSON (Ms. Semmler):** Are there any other general comments? Does the committee agree that there are no further general comments? We can proceed to clause-by-clause review of the bill. Committee, we will defer the bill number and title until after consideration of the clauses. Please turn to page 1 of the bill. Clause 1, does committee agree?

---Clauses 1 through 10 inclusive approved

**CHAIRPERSON (Ms. Semmler):** Clause 11? Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. I do have a few more questions of the Minister

on this clause, and they really pertain to page 6, over on the next page. I just wonder: why is the employment standards officer the individual who is making the determination? Why is it not the Minister? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. I believe that is best practice. I think there are maybe two jurisdictions in Canada in which it's the Minister who makes these types of decisions. There is more to this than just reading a briefing note and making a decision, and that's what Ministers are good at. There is case law that has to be looked at; there is substantial case law around provisions like this in Canada. Perhaps I could ask Ms. Mathisen to explain because I saw what happened during the pandemic when the employment standards officers had to make decisions. I saw the work that went into making those decisions and the things that they had to look at, the research they had to do. Perhaps I can ask Ms. Mathisen to explain the process and why it is an appropriate decision to be made by an employment standards officer. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Minister. Ms. Mathisen.

**MS. MATHISEN:** Thank you, Madam Chair. The employment standards officer would be making the decision, but as the Employment Standards Act is under the Minister's authority, he would still technically be accountable for the decisions made under the act. I would like to clarify: the language that we used in Bill 20 was modelled after other jurisdictions' language in this regard. As the Minister noted, there is substantial case law that does exist already that would help guide our interpretation of these provisions should a situation occur, and so that would be very beneficial to our office in determining whether or not a waiver would be granted or ordered. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. I'm still of the view that I think this should be the Minister making a decision. The Minister should be held accountable. It's probably not going to happen all that often, I hope, and I think it has lots of political ramifications. I think the Minister should be the one making the decision, but I'm going to let that one go for now. I'm just wondering: the way that this section reads now, this is not an application-based process. Somehow, a notice of termination lands on an employment standards officer's desk, and they have to make the determination about whether it meets the timelines set out in the bill or the act. Then they have to determine whether all of these terms and conditions are met. That seems to place the onus of dealing with a waiver on the employment standards officer rather than on an employer, so why is this done this way? Why is it not an application-based process? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. The notice is essentially an application. If there was an application, it would be a duplication of the information contained in the notice, and so it would just be more paperwork. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. Is there a prescribed form, then, for notice, or is it just a letter that an employer would submit? Is there direction in the bill that the notice should contain reasons as to why a waiver is being sought? I don't think that's the case at all, but I'd like to hear from the Minister. Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. For those operational details, I would ask you to hand it to Ms. Mathisen.

**CHAIRPERSON (Ms. Semmler):** Ms. Mathisen.

**MS. MATHISEN:** Thank you, Madam Chair. I would add that, first off, in the committee's motion to amend, they had also considered including an application process, and we had had a discussion about whether an application would be appropriate. Our department's fear in introducing an application was that it could actually open up scenarios where employers might potentially test the waters by submitting an application to our office to try to circumvent a proper group termination notice. Our intention with this bill is that it would only apply to very few exceptional scenarios. Although it may not read that it's written out that an employer would be required to provide specific reasons, upon receipt of inadequate notice, our office would contact the employer and ask for information to verify whether the circumstances met the criteria in the waiver of the exception provisions. That's typically how things work in employment standards, is that there is a dialogue back and forth when making these decisions and that dialogue would continue until our office felt satisfied we had enough information to make such a decision. Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. I appreciate that explanation. I just don't understand why we wouldn't make this an application-based process. Just getting a notice of termination, the employment standards officer, then they have to determine whether a waiver is being sought in the first place, then they have to determine whether they need more information. Why not just make it clear right up front that it's an application-based process? I think the wording in the bill now is going to delay a decision because the employment standards officer is going to have to go back and forth. I just don't get this.

My preference is that the onus be put on the employer to say very clearly, "We are seeking a waiver, and here's why." Leaving this on the back of the employment standards officer, I just don't think is an appropriate way to do this. The onus should be on the employer if they're going to seek this, and I don't think it has to be an onerous thing. I think they can develop a form, check off all the information, provide the contact information. "We are seeking a waiver, yes, and here's the reason why we're seeking a waiver." It could be done very easily. However, to just get a letter that we're going to terminate a number of employees, and then the employment standards officer has to figure out whether it fits the right time period, and then they have to go back and ask for more information about what the grounds are for the waiver, it just doesn't seem to make any sense to me. With that, Madam Chair, I want to move a motion to amend this

section, if I may.

COMMITTEE MOTION 92-19(2):

BILL 20: AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT - DELETION IN SUBCLAUSE 11(3) OF PROPOSED SUBPARAGRAPH 41(6)(A)(II), DEFEATED

**MR. O'REILLY:** I move that clause 11(3) of Bill 20 be amended by deleting the portion of proposed subclause 41(6) preceding paragraph (a) and substituting the following: "(6) On application, the employment standards officer may, by order, waive the application of subsection (2) if the officer is satisfied that." Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. The motion is in order. To the motion. Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. Look, I don't want to drag this out any longer than I have to, but, Members, if you want to see what this actually does, everybody has a copy of Bill 20 in the grey binders underneath your desk. If you want to look at this, all this does is add two words at the beginning of clause 6 or whatever it's called here. The two words are "on application." Then it's very clear that it's an employer who is seeking a waiver and that they should be providing some information to the employment standards officer up front. I think this will shorten the period of time for getting to a decision and just allow for a more transparent and a quicker decision at the end of the day. Look, I didn't walk the halls to try to lobby everybody. That's not how I do my stuff here in the House. If you think this is the right way to do something, I would hope that you would vote in favour of it. I don't think I really have much else to add, Madam Chair. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. To the motion. Minister.

**HON. R.J. SIMPSON:** Thank you. This was discussed, the idea of an application, while we were working with committee. Ultimately, we came to an agreement that did not include an application. One of the reasons that I provided, and I don't know how influential this was on committee, but once we start introducing applications for this, it will give companies the opportunity to see if they can perhaps game the system. It allows them to test the waters. "Maybe I'll put in an application to see if I can lay people off sooner." That's not at all what this is intended for, this clause, and this motion introduces that idea. If anything, it would, I think, waste the time of the Employment Standards Office because they would have to deal with those companies who are testing the water.

I want to assure everyone that, if there is a notice of group termination, if there are 25, 50, 100 people getting laid off, you had better believe that the Employment Standards Office pays attention and deals with that immediately. It doesn't waste time; it doesn't dilly-dally and wait to make a phone call back; it jumps on it. That's what they do. In my opinion, I see this as adding red tape and adding time and really being contrary, I think, to what the Member's intent is here. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Minister. To the motion. Member for Kam Lake.

**MS. CLEVELAND:** Thank you very much, Madam Chair. This was discussed at committee at length, and I do see both where the Member is coming from and also where the Minister is coming from. Ultimately, where I ended up sitting was feeling that I wanted to make sure I was doing my due diligence to ensure I was protecting the rights of employers and making sure that, if somebody decided that they were going to go down this path, that they were fully committed to it before doing it and respect the views of the department that it would potentially open up opportunity for people to game the system. Ultimately, I won't be supporting the motion for that reason, in that I feel that it is important that, if somebody is going to do a group termination, that they are committed to it from the outset. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you, Member. To the motion.

**SOME HON. MEMBERS:** Question.

**CHAIRPERSON (Ms. Semmler):** Question has been called. Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. I am not sure I can accept what the Minister said. Section 41(1) of the act, and this is one that is not being changed, says that an employer who wishes to terminate the employment of 25 or more employees at one time, or within a period not exceeding four weeks, shall give copy of the notice of termination to the employment standards officer and the trade union of which the employees may be members. This precludes a company from going on a fishing expedition, and if an employment standards officer gets a notice of group termination, and it's not for an actual termination, why would they even accept it? They could dismiss it very quickly.

I just don't accept what the Minister has said, that employers are going to be out there trying to game the system and that they are trying to do this testing the waters and so on. I just don't accept that as a valid reason to try to shift the onus back into the employment standards officer. I think it's much cleaner, clearer, the onus should be on the employer to seek the waiver, provide the information upfront, and let the employment standards officer do their work. That's the intention of this motion. Thanks, Madam Chair, and, Madam Chair, I request a recorded vote. Thank you.

#### RECORDED VOTE

**CHAIRPERSON (Ms. Semmler):** Thank you. The Member has requested a recorded vote. All in favour, please stand.

**DEPUTY CLERK OF THE HOUSE (Mr. Rutland):** The Member for Frame Lake.

**CHAIRPERSON (Ms. Semmler):** All those opposed, please stand.

**DEPUTY CLERK OF THE HOUSE (Mr. Rutland):** The Member for Deh Cho, the Member for Yellowknife North, the Member for Nahendeh, the Member for Sahtu, the Member for Inuvik Boot Lake, the Member for Hay River North, the Member for Great Slave, the Member for Kam Lake, the Member for Hay River South, the Member for Tu Nedhe-Wiilideh, the Member for Yellowknife South, the Member for Range Lake, the Member for Yellowknife Centre.

**CHAIRPERSON (Ms. Semmler):** Abstentions? None. Thank you. The results of the recorded vote are: 1 in favour, 13 opposed, no abstentions. The motion is defeated.

---Defeated

Clause 11, does committee agree? Member for Frame Lake.

**MR. O'REILLY:** Thanks, Madam Chair. I have one other issue I want to raise with this part of the bill. There are a number of reasons outlined that an employment standards officer could use to satisfy themselves that a waiver could be issued. Those are found in 6(a). The committee received correspondence from the Union of Northern Workers that expressed some concern about the broad and vague language of some of these provisions, in particular around (ii), climatic or economic conditions, so I would like to ask the Minister whether there is any kind of further case law or definitions or whatever that might inform how an employer can seek an exemption for climatic or economic conditions? Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. I just want to point out that this clause isn't set up so that employers seek exemptions. Generally, what we expect to happen, and what happens across Canada, is that employers' backs are up against the wall. They are laying people off without checking legislation because it's a dire situation and they have no choice. I just wanted to make that point.

There is case law around the climatic or economic conditions. As was mentioned earlier, this was modelled after other acts from around Canada. There are also a number of qualifiers. In 11(6)(a), it says that it has to be an unforeseen event. It has to be beyond the control of the employer. If you see 11(6)(b), it says the employer has to exercise due diligence to avoid the cause of the termination. In addition to the case law, there are qualifiers right within the act as well. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. I'm not sure that really answered the question. Look, I fully understand that there are a number of reasons why a waiver could be granted: destruction or major breakdown of equipment or machinery equipment and a number of kinds of emergencies. I just wonder about broad and vague language like "climatic or economic conditions," and whether there is any kind of guidance there. There doesn't seem to be any kind of guidance in the bill, the act itself, around how this could be interpreted. On what grounds would an employment standards officer be able to grant an exemption? Simply a business is doing bad, and it wasn't foreseen? That might be good enough for an employer to lay off their employees. What kind of guidance is available here? Thanks, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** Thank you. Minister.

**HON. R.J. SIMPSON:** Thank you. Businesses do bad all the time. That's not unforeseen. If you are going into business, you should foresee that you might not do well. That's just the way of the world. When we talk about economic conditions, that's a broader condition. There is some guidance in case law, but what happened is we did try

and work to narrow this language down. In the end, what we did was we came back full circle, we had 10 times as many words that were basically a broad definition for climate or economic conditions. We could put "rain, snow, heavy winds," and other weather, but we are saying, basically, "climate conditions."

There were attempts made, but narrowing this down, I think, would lead us to situations where we are excluding companies who have legitimate claims from this exemption because they don't fit into the letter of the law. I think we've all seen policies that you kind of shake your head at because they don't seem to make any sense. It's a small technical point that is sort of working against the spirit of the bill. We wanted to avoid that, and we felt that there was enough case law, enough history with these types of clauses in Canada, that this was an appropriate level of detail. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. Member.

**MR. O'REILLY:** Thanks, Madam Chair. I appreciate the Minister's explanation. I don't agree with it. If climatic or economic conditions lead to destruction or major breakdown of machinery or equipment, it's already covered with (i). If climatic or economic conditions lead to some kind of an emergency, particularly climatic conditions, it likely could be and would be covered off by the kinds of emergencies that are specified in the following three subclauses there. I think having this broad and vague language in here is not very helpful and is probably going to lead to things getting taken to court and so on for interpretations, appeals, and so on. I think that terms and conditions already laid out here with (i) about destruction or major breakdown of machinery or equipment or the other provisions around emergencies already cover off what could be covered by climatic or economic conditions. With that, Madam Chair, I'm going to move another motion. I guess I'm not doing too well here today, but I'll go ahead and do it anyway.

COMMITTEE MOTION 93-19(2):

BILL 20: AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT – DELETION  
AND SUBSTITUTION IN SUBCLAUSE 11(3), DEFEATED

**MR. O'REILLY:** That Bill 20 be amended by subclause 11(3) by deleting proposed subparagraph 41, (6)(a)(iii). Thank you, Madam Chair.

**CHAIRPERSON (Ms. Semmler):** The motion is in order. To the motion. Member for Frame Lake.

**MR. O'REILLY:** Thanks. I'm not going to prolong this anymore, I just think that having the broad, vague language in here is not in keeping with trying to find a proper balance between the rights of workers and the rights of an employer. I think removing this line will help maintain a better balance. Thanks, Madam Chair. I request a recorded vote again. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. To the motion. Member for Great Slave.

**MS. NOKLEBY:** Thank you, Madam Chair. I also had questions about this particularly, not so much around climatic conditions but around the economic situation in the scenario where somebody hasn't been doing their due diligence and had not been a proper businessperson and tried to use this. However, any further discussion with the

clerk and the Minister and the pointing out of section A saying that it has to be beyond the control of the employer or because of an unforeseen event, but then, as well, that this is the discretion of the employment standard officer, who is someone that we have entrusted a lot of faith in already to make certain decisions when it comes to these sorts of things. What I'm saying is that I think of a scenario where, say, a road is wiped out by a climatic condition and workers can't get to the site, the site shuts down, nobody can work, and they are laid off. There won't be a state of emergency declared by any state or level of government at that time. It doesn't lead to destruction or major breakdown of equipment, so there are scenarios where I don't think the other subclauses do fit or would be able to accommodate for those types of situations, and as a result I will be voting against this motion. Thank you.

**CHAIRPERSON (Ms. Semmler):** Thank you. To the motion.

**SOME HON. MEMBERS:** Question.

**CHAIRPERSON (Ms. Semmler):** Question has been called. The Member has requested a recorded vote. All those in favour, please stand.

#### RECORDED VOTE

**DEPUTY CLERK OF THE HOUSE (Mr. Rutland):** The Member for Frame Lake.

**CHAIRPERSON (Ms. Semmler):** All those opposed, please stand.

**DEPUTY CLERK OF THE HOUSE (Mr. Rutland):** The Member for Deh Cho. The Member for Yellowknife North. The Member for Nahendeh. The Member for Sahtu. The Member for Inuvik Boot Lake. The Member for Hay River North. The Member for Great Slave. The Member for Kam Lake. The Member for Hay River South. Member for Tu Nedhe-Wiilideh. The Member for Yellowknife South. The Member for Range Lake. The Member Yellowknife Centre.

**CHAIRPERSON (Ms. Semmler):** All those abstaining, please stand. Thank you. The results of the recorded vote: one in favour, 13 opposed, zero abstentions. The motion is defeated.

---Defeated

Clause 11, does committee agree?

---Clauses 11 through 12 inclusive approved

Committee, to the bill as a whole. Does committee agree that Bill 20, An Act to Amend the Employment Standards Act, is now ready for third reading?

**SOME HON. MEMBERS:** Agreed.

**CHAIRPERSON (Ms. Semmler):** Thank you, committee. Bill 20, An Act to Amend the Employment Standards Act, is now ready for third reading. Does committee agree that this concludes our consideration of Bill 20, An Act to Amend the Employment Standards Act?