

Short Research Article

Procedural Fairness: Minimum Wage or Minimum Democratic Governance?

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Received: April 14, 2020

Accepted: April 20, 2020

Online Published: April 21, 2020

doi:10.22158/sss.v1n1p16

URL: <http://dx.doi.org/10.22158/sss.v1n1p16>

Abstract

This article critically examines the Ontario government announcing in its 2007 budget that it would increase the minimum wage incrementally, the last hike to occur in March 2010. In March 2009, Premier McGuinty met with business leaders in a private, behind closed doors meeting. News of this leaked out revealing that he stated that he might cancel the remaining increases given economic conditions. Pressed by reporters to explain his apparent flip flop, and shamed by the lack of transparency, he reversed himself again saying this: When we talk about the minimum wage, we have to ask ourselves what it is that we owe both our workers and employers. I think clearly we owe them fairness. Our commitment was to get \$10.25 an hour one year from now and we will honour that commitment. This article will review the procedural fairness issues arising in this scenario including both the legal definition and the political implications for democratic governance.

Keywords

Democratic governance, procedural fairness, Ontario, minimum wage, McGuinty

1. Introduction

Dalton McGuinty, former premier of Ontario (2003-2013) and leader of the Liberal Party at the time is known for his regular increments towards the minimum wage earned in Ontario. This could be in response to the relatively stagnant minimum wage set by Mike Harris's Progressive Conservative Government (1995-2002) and Ernie Eves Progressive Government (2002-2003) that remained frozen at \$6.85. McGuinty's reasoning to have a minimum wage at par with current inflation rates is perfectly legitimate and in fact beneficial for low income families struggling with the rising cost of everyday living. In the 2007 Ontario Budget, the minimum wage increments were outlined and set to take place in the course of a few years with the final increase from 9.50 to 10.25 set for 2010. McGuinty and his Liberal Government at the time had no concrete perception of the severity of the 2008 financial crash that

crippled the world economy.

1.1 Aftermath of the Great Recession in Ontario

Although Canada was relatively lucky in the aftermath of the 2008-2009 Great Recession in comparison to the United States, Canada and its provinces faced its fair share of financial difficulties leading to McGuinty reconsidering the minimum wage program as opposed to letting it run as outlined in the 2007 Ontario budget. Dalton McGuinty and his Liberal Government were bound by legal and political implications to maintain democratic governance for employers and workers across Ontario. Despite valid reasons to cancel the program due to poor economic circumstances, the government was ultimately forced to remain with their original decision not just for administrative reasons but McGuinty's ultimately decision not to "flip-flop" on the 2007 Ontario Budget for minimum wage increases is also based on political and societal concepts.

1.2 Ontarians Reaction to Potential Minimum Wage Cancellation

From a societal standpoint, many residents in Ontario felt Dalton McGuinty and his Liberal Government were disconnected from the working class. Bruce Campion-Smith, Rob Ferguson & Robert Benzie from the Toronto Star along with many other Ontarians voiced their concerns at the possibility of the Liberal Government reserving minimum wage increases set for 2010. The title of the article being *McGuinty accused of betraying the poor* describes the atmosphere many Ontarians especially those of low income felt toward McGuinty and his Liberal Government, "NDP Leader Andrea Horwath accused McGuinty of betraying the poor. 'It now appears that Dalton McGuinty is prepared to turn his back to more than a million Ontarians living in poverty and the many more who are just one paycheck away from it', she said" (Smith, Ferguson, & Benzie, 2009). With opposition parties branding McGuinty as "turning his back" this will give Ontario residents especially those who are politically left, or center left in a position where they question the validity of the McGuinty government and keeping their promise for minimum wage reform.

As expected, the Progressive Conservatives also gave their input on the matter stating, "Progressive Conservative MPP Tim Hudak (Niagara West-Glanbrook) called McGuinty's statements 'clearly a broken promise'. 'Page 38 of the Ontario budget papers talks about the minimum wage increase, and now, less than a day later, they're backing away', Hudak said" (Smith, Ferguson, & Benzie, 2009). This response from an MPP of the Progressive Conservative's is contradicting when comparing the nonexistent minimum wage increases under the previous PC governments. Nevertheless, the fact they were mentioning McGuinty's quickness to break a promise that will help many Ontarians significantly is worth mentioning regardless of the party's main ideologies. Many conservatives felt McGuinty was quick to implement minimum wage increases and pulled out at the first signs of difficulties because of poor planning that led to the installments of minimum wage increases without proper consultations. Under circumstances such as this, procedural fairness is prevalent to ensure a fair process and fair outcome comes out of the minimum wage debacle.

1.3 Procedural Fairness and Ontario's Minimum Wage

"According to the Baker vs. Canada, procedural fairness is" flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself (Minister of Citizenship and Immigration, 1999).

This definition describes procedural fairness well and resonates with the minimum wage scenario because a major issue that arose in this all was McGuinty's closed door meetings to remove a portion of his promise to the residents of Ontario. McGuinty's Government would have likely been sued for his untimely and uninformed decision. This creates and amplifies the ongoing concerns of administrative discretions that are predominantly among public administrations. McGuinty could have easily expressed these concerns in a public forum if the initial reasons for the economic relief were in response to the recession. McGuinty's approach was wrong despite the nature of the decisions being based on the overall economic health of the province. However, his closed-door meetings show contempt for properly addressing the nature of the statutory scheme and the terms of the statute pursuant to which the body operates as well as the factoring in the importance of the Ontarians particularly those of low income that will be affected significantly from this change questioning Ontarians right to a democratic democracy. At this point, Ontarians and opposition political parties who wish to sue the government have a strong base to challenge the premier's potential decision because of his secrecy behind attempting to cancel the final installment of the minimum wage. The procedural fairness would support the defendants a great deal due to McGuinty's Government due to his closed-door meetings on matters that would significantly affect the lives of many Ontarians. If McGuinty expressed his concerns for Ontarians to give their input and be informed on all decisions made by the government, especially monumental changes such as the cancellation of the final installment of the minimum wage program affecting small business owners and low-income Ontarians in particular.

"I argue that the exercise of discretion by public officials, in order to be accepted as both legitimate and just, must be validated publicly on the basis of its substantive content.³ The apparatus of the welfare state calls up on its officials to make myriad discretionary judgments in the performance of their duties, judgments which shape the social, political and economic fabric of our society" (Sossin, 1994).

Sossin's inquiry into Authority, Discretion, and the Possibility of Engagement in the Welfare State

provides in depth examples of the bureaucracy and discrepancies that public administrations do in regards with the welfare state. McGuinty should be held to the same standard and he should make sure that his actions behind the possibility of cancelling the final stage of the minimum wage increase is transparent showing fair decision making as opposed to closed door meeting being leaked to the public suggesting McGuinty's Liberal Government is not using procedural fairness when exhibiting fair decisions especially at the expense of low income Ontarians.

1.4 Democratic Governance & Ontario's Minimum Wage

From a legal and political perspective, democratic governance ensures the rule of law is maintained and protects people fairly from unfair decisions and judgements that are against their best interests. Democratic Governance should be an open forum for everyone to voice their concerns and be aware of potential decisions that could affect them and their communities. Democratic Governance under legal terms would apply in this case because McGuinty's closed door meeting infringes on the freedom of speech that Ontarians have. Ontarians should have been informed of the possibility of the minimum wage cancellation.

Procedural fairness unbiased process and outcome shares similarities with democratic democracy objectives. In this case, Ontarians were deprived of a proper forum to voice and express their support, opposition and/or concerns with McGuinty's proposed plans. They were blindsided and were unable to actively participate in a democratic governance that promised them the very components of participatory actions they were stripped of. Like Doug Ford's decision to invoke the notwithstanding clause (Section 33) giving federal and provincial government the right to override certain rights within the Charter of Rights and Freedoms, if Dalton McGuinty had gone through with the cancellation of minimum wage, he would have the opportunity to use Section 33 in response to any lawsuits or attempts to reserve his decision. This could be considered procedural unfairness as administrative loopholes such as Section 33 can be seen as an unconstitutional infringement on the rights of Ontarians to have fair access to challenge the government's decisions.

2. Conclusion

In conclusion, this paper has evaluated and examined the opportunity to ponder concepts which are critical not just in administrative law, that is, in relation to governmental decision making, but also in the context of the broader political, social and economic landscape. It is important to acknowledge Dalton McGuinty's government closed meetings for possibly cancelling the minimum wage increase as procedurally unfair. This essay reviews procedural fairness evaluating the perspectives of Ontarians who are blindsided by a sudden possibility of the minimum wage increase being cancelled. Despite the argument that suggests that the government was considering the cancellation in response to economic difficulties, McGuinty and his government could have easily practiced effective democratic governance and voiced these concerns for the public to give their perspectives and have active participation in the ongoing issues and decisions being made by the provincial government. Ontarians deserve procedural

fairness in all aspects of the court and government systems as well as a democratic governance that regularly promotes and practices open forums for everyone to be informed and place their concerns. McGuinty's actions proved that his government was not thinking of the democratic governance all Ontarians deserve and it is important to understand the importance of procedural fairness and how the process would be applicable and helpful for Ontarians who were not remotely informed of a major change being discussed by the Ontario government.

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