



Legislative Assembly
of Ontario

First Session, 38th Parliament

Assemblée législative
de l'Ontario

Première session, 38^e législature

Official Report of Debates (Hansard)

Tuesday 26 April 2005

Journal des débats (Hansard)

Mardi 26 avril 2005

**Standing committee on
social policy**

Labour Relations Statute Law
Amendment Act, 2005

**Comité permanent de
la politique sociale**

Loi de 2005 modifiant des lois
concernant les relations
de travail

Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
Greffière : Anne Stokes

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Tuesday 26 April 2005

Mardi 26 avril 2005

The committee met at 1530 in committee room 1.

**LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005**

**LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL**

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Projet de loi 144, Loi modifiant des lois concernant les relations de travail.

SUBCOMMITTEE REPORT

The Chair (Mr. Mario G. Racco): Good afternoon, Ucal Powell and everybody else. Welcome to our second day in discussing Bill 144. If everybody will have a seat, we can start on time, please. The first item on the agenda today will be a motion to receive the report of the subcommittee that took place on Thursday, April 14. May I have a mover?

Ms. Kathleen O. Wynne (Don Valley West): I'd like to move the report of the subcommittee, and I believe I need to read it into the record.

Your subcommittee met on Thursday, April 14, 2005, to consider the method of proceeding on Bill 144, An Act to amend certain statutes relating to labour relations, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 144 on Monday, April 25, and Tuesday, April 26, 2005, in Toronto and that the committee travel to Kitchener, Ontario, for public hearings on Friday, April 29, 2005. Times and locations are subject to change based on witness response and travel logistics.

(2) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, Toronto Sun, National Post, Kitchener Record and London Free Press and also be placed on the Ont.Parl channel, the Legislative Assembly Web site and in a press release.

(3) That the deadline for those who wish to make an oral presentation on Bill 144 be 5 p.m. on Wednesday, April 20, 2005.

(4) That the deadline for written submissions on Bill 144 be 5 p.m. on Friday, April 29, 2005.

(5) That the clerk be authorized to schedule groups and individuals in consultation with the Chair, and that if there are more witnesses wishing to appear than time

available, the clerk will provide the subcommittee members with the list of witnesses, and each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled.

(6) That the time to be allotted to organizations and individuals in which to make their presentations be determined by the Chair in consultation with the clerk depending on the number of requests received.

(7) That the research officer provide the committee with a summary of witness presentations, prior to clause-by-clause consideration of the bill, and that the research officer prepare a summary of provisions in Ontario and comparable jurisdictions on the issues.

(8) That amendments to Bill 144 should be received by the clerk of the committee by 5 p.m. on Tuesday, May 3, 2005.

(9) That the committee meet for the purpose of clause-by-clause consideration of Bill 144 on Monday, May 9, 2005, in Toronto.

(10) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the report, Mr. Chair.

The Chair: Are there any questions on the report? Is anyone in favour of the report? Anyone against? The report carries.

**CARPENTERS' DISTRICT COUNCIL
OF ONTARIO**

**UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA**

The Chair: The first presentation is from the Carpenters' District Council of Ontario. Mr. Ucal Powell and Charles Calligan are present. Please start your presentation. You've got 10 minutes total for your comments and, if there is any time left, we will allow some questions for you.

Mr. Ucal Powell: My name is Ucal Powell. I'm the president of the Carpenters' District Council of Ontario, and also secretary-treasurer of the Central Ontario Regional Council of Carpenters. With me is the secretary-treasurer of the Carpenters' District Council of Ontario. Brother Calligan will be reading our presentation. Obviously, we're here in support of Bill 144.

Mr. Charles Calligan: Part A, introduction: The Carpenters' District Council of Ontario and United Brotherhood of Carpenters and Joiners of America support Bill 144, An Act to amend certain statutes relating to labour relations, 2005.

The Carpenters' District Council of Ontario consists of 17 affiliated local unions across Ontario, representing almost 20,000 members. Our members consist of carpenters, drywallers, floor layers, caulkers and piledrivers who work in an industry that is unique, where work for an employer is normally of a short duration and, during any given year, a carpenter can work for any number of employers.

The construction industry consists of many different sectors, each of which presents its own unique dynamic. There are the industrial, commercial and institutional sector, the residential sector, the heavy engineering sector, the electrical systems power sector and others. Members of the carpenters' union can be found in each of these sectors. All of the members have a common goal; namely, to deliver a good quality finished product in a timely fashion.

An important part of the construction industry is apprentice training and the ongoing training of members of the carpenters' union. The construction industry needs to maintain the skilled carpenters currently working on projects and must also plan for replacing these skilled carpenters when they retire.

The carpenters' union, in conjunction with the unionized employers in the construction industry, has developed apprenticeship and training programs for carpenters throughout the province. These programs are sustained by the monetary contributions that are remitted to the apprenticeship and training trust funds when carpenters are employed on various projects in Ontario. Through collective agreements between the carpenters' union and unionized employers, for every hour worked by a member of the carpenters' union, a monetary sum is remitted to these apprenticeship and training trust funds.

The carpenters' union, again in conjunction with the unionized employers in the construction industry, has established training facilities at various locations in the province of Ontario. Admittedly, some grants have been received from various levels of government, but these grants by no means carry the financial load of the training facilities. It is the contributions paid through the collective agreements between the carpenters' union and the unionized employers that provide support for these training facilities. In other words, it is unionized employers, the employers who employ members of the carpenters' union in conjunction with the carpenters' union, who support and advance the training of new carpenters to the Ontario workforce and the ongoing training of current carpenters to upgrade their skills to meet changing technology.

Employers who have collective agreements with the carpenters' union also provide a fair standard of living to the employees of these employers. Not only is there a fair wage, but the collective agreements contain provisions

that provide health and welfare benefits and pension plans.

The carpenters' union and the employers of its members have established health and welfare plans that provide for the payment of prescription drugs, health care, life insurance, dental care etc. In order to support these plans, contributions are paid into a health and welfare fund on a monthly basis, again from the total wage package paid to members of the carpenters' union who work for these unionized employers.

The carpenters' union and the employers of its members have also established pension plans that will provide income to the members of the carpenters' union when they retire. In addition, the very existence of these pension plans serves to keep the skilled tradespersons—the carpenters and other trades—working in the construction industry during their working life. These pension plans are supported by the monthly contributions paid into pension trust funds from the total wage package paid to members of the carpenters' union who work for these unionized employers. These same unionized employers who, together with the carpenters' union provide apprenticeship opportunities, training, a fair wage, health and welfare benefits and pension plans, must then compete with employers who provide little or none of the foregoing.

Unionized employers in the construction industry often compete with employers who do not provide a fair wage, who do not provide health and welfare plans, who do not provide pension plans and who do not provide funds and facilities to introduce apprentices into the workforce and to retrain and upgrade current employees. In other words, non-union employers are often only concerned with obtaining work and completing the particular project. They have no interest in the long-term viability of the construction industry. Training and fair remuneration to the employees in the construction industry are key elements in ensuring that the construction industry in Ontario continues to thrive. These elements are only provided by unionized employers.

In a card-based certification system, employees can make a decision to join a trade union in the peace of their own home without interference or pressure from the employer. Where this decision is made in the workplace, whether or not by a secret ballot vote, the subtle and not-so-subtle pressures from employers improperly influence employee decision-making.

The construction industry can no longer support the employer who does not make a long-term investment in its employees, who does not make a long-term investment in training and who competes with unionized employers, not only to the detriment of the employees but to the detriment of the construction industry itself.

Part B, the Labour Relations Act: The duration of construction projects and the continual shifting of employees from one project to another makes certification in the construction industry difficult to obtain. The Goldenberg Royal Commission on Labour-Management Relations in the Construction Industry led to special

provisions in the Labour Relations Act dealing with employees and employers who worked in the construction industry. These provisions were initially enacted by the Legislature in 1961-62. In fact, in 1962, a special panel of the Ontario Labour Relations Board was established to deal with cases in the construction industry. Currently, the Labour Relations Act, 1995, has a distinct division of some 42 sections of the act that are specifically dedicated to employers and employees working in the construction industry.

Part C, The 1995 act: The 1995 act significantly altered the long-standing principle of card-based certification; that is, that a trade union in the construction industry could be certified without a vote where the trade union was able to establish the requisite membership support in the bargaining unit. The 1995 act changed this principle and required a representation vote in all applications for certification.

1540

For the period from 1961 to 1995, a trade union in the construction industry was able to obtain certification based on membership evidence that met the requirements of the Labour Relations Act. In 1995, the balance that had existed in the construction industry for over 30 years was upset by deleting the provisions relating to card-based certification.

Since 1961, the Labour Relations Act has contained many sections that only apply to employers and employees in the construction industry. Certain of these sections are seen to be providing a benefit to employees in the industry and certain other sections are seen as providing a benefit to the employers in this industry. In other words, there has usually been a balanced approach to legislation that is applicable to employers and employees in the construction industry.

Some of the unique provisions of the current act relating specifically to employers and employees in the construction industry can be found in sections dealing with single employer/sale of business declarations, termination of bargaining rights, referrals of grievances to arbitration, accreditation of employers' organizations, provincial bargaining, regulation of internal trade union affairs, common expiry dates of collective agreements in certain sectors of the construction industry, specific-term collective agreements, limits on the rights of strike lockouts and other provisions.

For over 30 years, the Legislature has acknowledged that, for the purpose of balanced approach to labour relations, the construction industry presents unique features that require a different approach to certification, collective bargaining and regulation of labour relations between employers and trade unions.

Part D, Bill 144, 2004: Under proposed Bill 144, if a trade union in the construction industry has more than 55% of the employees in the bargaining unit as members of the trade union, the board can either certify the trade union or direct a representation vote.

An obvious question is why card-based certification is to be made only to employees in the construction indus-

try. The answer to this question has been partially explained in the above parts of this paper, and is obvious.

In the construction industry, there are the following discrete characteristics: (a) employees often work for a particular employer for a short period of time; (b) the size of the workforce on a particular day varies constantly; (c) there is not one place of employment; each project is a place of employment; and (d) the collective agreements in the construction industry are markedly different from collective agreements in other industries; these collective agreements normally provide the flexibility to an employer to respond to the nature of the workplace, and the fact that work is provided on a project-by-project basis and that employees may be on the project for one day or more.

Given the nature of the construction industry, card-based certification provides the necessary balance that allows for employees to be represented by a trade union under a collective agreement, while at the same time providing a threshold of support that the trade union must have in order to obtain certification.

Card-based certification in the construction industry is but one piece of the special provisions of the act that are applicable to this industry. The absence of this piece during the past number of years has upset the balance and fairness that various Legislatures have strived to achieve since 1961-62. It can be further argued that card-based certification has existed in the province of Ontario since 1950 until 1995, some 45 years. However, even if one looks at the period since 1961-62 and considers the amendments to the Labour Relations Act that pertain specifically to the construction industry, a unique labour relations system has been built to accommodate the needs of employers and employees.

As stated earlier, and similar to the construction project in the province of Ontario, the labour relations system in the construction industry has been adapted and modified to meet the labour relations landscape that is unique to this industry. Again, like any construction project, it is necessary to revisit the site to ensure that the structure continues to meet the needs of the occupiers and is balanced and fair. Needless to say, other changes will no doubt be necessary in the future to ensure that the model remains relevant, balanced and fair to all participants.

The fact is that a card-based system of certification is not novel. It has existed for over 45 years in this province, and the time has come to restore this balance and fairness for employees in the construction industry. Thank you very much.

The Chair: Thank you very much to the Carpenters' District Council of Ontario for your presentation.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: We'll move on to the next presentation, from the Canadian Federation of Independent Business. You can start any time. You have 10 minutes.

Ms. Judith Andrew: Good afternoon, Mr. Chairman. I'm Judith Andrew, vice-president, Ontario, of the Canadian Federation of Independent Business. Joining me is my colleague Satinder Chera, who is CFIB's Ontario director.

You have a kit before you. We're going to follow rather quickly through the main brief, but there are several other pieces of interest. In order to bring a couple of things to your attention, we've also put them up on easels.

CFIB is very proud to represent the interests of small- and medium-sized enterprises in the province. They employ half of working Ontarians, they create most of the net new jobs in the economy and they're a reliable barometer for what goes on in our economic prospects. On behalf of CFIB's 42,000 Ontario small- and medium-sized enterprise members, we appreciate the opportunity to appear here today.

Far from restoring the balance to labour relations, Bill 144 threatens democracy in the workplace and the economic prosperity of the province. Without major amendments, Bill 144 will threaten the fundamental principle of democracy by removing the democratic right of workers to vote on whether or not to join a union in all instances and the ability of the employer to communicate with his or her employees. Given the important role that our members and small businesses generally play in the economy, we hope that the committee will adopt our amendments to this undemocratic and anti-business piece of legislation.

I'd like to say a word about our latest quarterly business barometer. It shows that confidence in the economy in Ontario remains flat. More disheartening is that business confidence in this province actually fell further behind the national average as of our last quarter result. Compared to a year ago, only 35% of business owners say their firms are performing better, while 30% say they're doing worse.

Generally, though, small business people are optimistic—that optimism is hard-wired in them—and they anticipate to do better in the future. But political leaders should not take their future expectations for granted. The deteriorating conditions in a number of business factors, including insurance, electricity prices and other input costs, as well as negative policies such as Bill 144, are certainly confidence-eroding for even the most optimistic of entrepreneurs.

Because the committee was only able to allocate our group 10 minutes to present the views of so many small- and medium-sized businesses, we elicited comments from our members and we have a small sample here of over 9,000 responses we have had from our members, pretty much unanimously against the changes in Bill 144.

I'd like to also counter one thing that Mr. Kormos said earlier in the week, and that is the suggestion that small businesses somehow owe their livelihood to the big business sector and the large unionized companies that are in our economy. That is certainly incorrect. Small businesses are very much a driver of the economy and they

held the economy up post-9/11, in the face of lots of shocks, regardless of what big business and the stock market was doing.

Satinder will now talk about Bill 144's undemocratic provisions.

Mr. Satinder Chera: I thought I'd begin by talking about card-based certification, which is a direct threat to the fundamental principles of democracy by removing the democratic right of employees to vote in secret on whether or not they would wish to join a union. If it's good enough to elect politicians such as yourselves to office, then why isn't it good enough for the hard-working men and women of this province to decide through a secret ballot whether or not they wish to join a union?

In British Columbia they have a system called recall, where a constituent can sign up close to 40% of local constituents and have his or her member recalled. I wonder how many politicians around the table would entertain that possibility if it came to the province of Ontario. It's the same kind of concept. If it's good enough to vote you folks into office, it should be good enough for the employees of this province to be able to decide if they want to join a union.

In fact, with a card-based system, typically an employee will sign it as an expression of interest or a prelude to a potential vote. If you buy a vacuum from a door-to-door vacuum salesman, you still get a cooling-off period. Well, not in this case, if you sign up a card.

1550

Our members, in a recent national vote, overwhelmingly voted in favour of allowing employees a right to vote in secret on whether or not they wish to join a union. In the province of Ontario, 75% of our members voted in favour of maintaining the current system.

The second point that I wanted to raise is around remedial certification. The data from the Ontario Labour Relations Board show that the small business sector is the only remaining target for union certification. Small business people and their employees are generally completely unfamiliar with certification rules, and on the opposite side, they face experienced union organizers who thoroughly understand every nuance of the act and who, through their union affiliations, have vast resources at their disposal. Small firms, however, lack a legal department, an HR department, an accounting department. You folks know, on a day-to-day basis, the challenges small businesses go through. It's one of the reasons that the government, last week, announced the creation of the small business agency, recognizing the enormous workload that governments impose upon small firms.

So then it begs the question, why in fact are these changes being brought forward? The reality is, based on news reports last week, that unionization in this country is sharply declining, so one can hardly blame unions for wanting another kick at the can. Card-based certification allows that opportunity for them.

I want to quickly refer to the charts that we have presented for you folks today. Minister Bentley, when he

kicked off second reading of Bill 144, stated, “Over the previous 15 years, labour relations tended to be characterized by legislation that was polarized, and deliberately polarized; by legislation that actively promoted disharmony, directly or indirectly.... This bill [Bill 144] brings back the balance and stability that characterized the labour relations environment for the decades between 1950 and 1990.” So we actually decided to go and do a bit of research. What we found from government statistics is that since 1990, the number of work stoppages in the province of Ontario has actually decreased overall. The notion that the former government’s oversight led to a period of disharmony and instability is patently false.

Ms. Andrew: I’d like to say a few words about the construction sector chart that you’ll find in your kits; it’s also there. The minister has also said that construction is different. I think some of the construction representatives have said that as well: It’s different, and in special circumstances, to ensure that workers have the right to properly decide, they need to include the option of card-based certification. Well, the reality here is that since 1999, the number of applications for certification in the construction sector have actually increased—that’s the top line on your chart—but since the mid-1990s, more workers have actually said no to joining a construction union.

Far from respecting the rights of workers, Bill 144 serves the marketing interests of unions in helping them to obtain more favourable outcomes and gain more members, and the influence and money that goes with that.

Mr. Dhillon referred earlier in the week to there being some 400,000 construction workers in the province. Clearly, the unions, even the presenters just before us, are pining for a system that returns to the 1950s. But frankly instituting a vote in Ontario was progress; taking the vote away is not. There is already a situation in construction where a very small skeletal staff on a construction site—even if there is a vote, it can end up being a vote of a very few people who will be affected by that vote. This bill actually gives the unions the opportunity to do that kind of strategic vote, if there is a small, skeletal staff, or the card-base certification, if that serves them better. How does this serve the men and women who work for construction companies in terms of making their own decision?

The Chair: Thank you very much for your presentation. We just went over 10 minutes, so there is no time for questioning.

Mr. Peter Kormos (Niagara Centre): Chair, there can’t be no time left.

The Chair: Yes, guaranteed.

ONTARIO RESTAURANT, HOTEL
AND MOTEL ASSOCIATION

The Chair: The next presentation is the Ontario Restaurant, Hotel and Motel Association. You have 10 minutes in total. You can start any time you are ready.

Mr. Terry Mundell: Good afternoon, Mr Chair, and members of the committee. My name is Terry Mundell. I am the president and CEO of the Ontario Restaurant, Hotel and Motel Association. It’s my pleasure to have the opportunity to speak with you this afternoon regarding Bill 144, the Labour Relations Statute Law Amendment Act.

The ORHMA is a non-profit industry association that represents the food service and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality association in Canada. Our hospitality industry is comprised of more than 3,000 accommodation properties and 22,000 food service establishments.

The ORHMA has serious concerns with the potential ramifications of Bill 144, concerns so serious that we have worked collaboratively with 11 other industry associations to form the Coalition for Democratic Labour Relations. Together, we represent over 100,000 small, medium and large businesses. Our shared concerns regarding the very negative effects of this proposed legislation brought a very disparate, and often competing, group of companies together. We sincerely hope this brings home to the government the authenticity and depth of our concerns.

When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance in the workplace. The ORHMA couldn’t disagree more. This bill threatens the fundamental principles of democracy by removing the democratic right of employees to vote on whether or not they choose a union and by threatening an employer’s right to free speech.

The coalition has worked collaboratively to develop proposed amendments to the legislation that will achieve the fairness and balance that the government has said this bill is intended to bring about. A copy of these proposed amendments has been shared with the Minister of Labour and with all members of the Legislature. We have also provided a copy for members of the committee today.

The ORHMA urges the committee to support the principles of democracy and to support our proposed amendments. The ORHMA has concerns with the sections of Bill 144 specifically addressing remedial certification, decertification posters, interim remedies and card-based certification. Due to time constraints, I will only address three of these.

Remedial certification: As currently drafted, Bill 144 gives the Ontario Labour Relations Board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. While public messaging by the government has stated that this power would only be used as a last resort, the legislation does not explicitly state this, nor does it explain what this means. Instead, smaller employers who may lack resources, legal background and experience may find themselves unwittingly committing acts that result in the labour relations board certifying their employees, without employees having had any chance to express how they feel about being unionized.

If the government is determined to allow the Ontario Labour Relations Board to make the decision on certification on behalf of employees, the circumstances in which this power will be used must be clearly set out in law. The ORHMA recommends that this section of the bill be amended to:

—Set out the types of conduct that can trigger remedial certification, specifically: repetitive acts or threats of physical violence against employees, termination of two or more employees known by the employer to be authorized and acting as inside organizers on behalf of the trade union, where the terminations are determined by the board to be contrary to the act, and repeated breaches of an order of the board;

—place the onus of proof on the applicant to prove that no other remedy exists;

—provide that a full, three-person panel of the board must agree to remedial certification before it can be ordered; and

—ensure in every case that employees are given at least one opportunity to cast a ballot and exercise the democratic right to express their views.

Interim reinstatement: Bill 144 gives the labour board the power to reinstate terminated workers while the issue of whether or not there was just cause for their dismissal is being litigated and before their employer is ever found to have done anything wrong. There is absolutely no recourse for the employer if the board ultimately finds the employer did nothing wrong in the first place. If this section is not amended, there is nothing to stop unions from filing unsubstantiated claims of dismissal, regardless of the merits of the case. This will create a climate where employers are hesitant to effectively run their own businesses for fear of having to deal with costly litigation arising from legitimate business decisions. The ORHMA recommends that this section be withdrawn.

Card-based certification: We believe that all Ontarians should be treated equally and that all Ontarians, in all sectors, should have the right to a secret ballot vote. The ORHMA opposes card-based certification in any sector and, as such, calls upon the government to remove this provision from the legislation.

1600

The ORHMA urges you to support the adoption of the coalition's amendments in order to protect the democratic rights of employees and employers. In the past year and a half, this government has openly discussed a democratic deficit. The ORHMA respectfully submits to this committee that any denial of a vote, that is, a vote by secret ballot, is the worst offence in fostering that democratic deficit. The ORHMA urges the adoption of the recommendations put forward by the Coalition for Democratic Labour Relations. Thank you very much.

The Chair: There are about three minutes left. I'll start with you, Mr. Kormos, please.

Mr. Kormos: I understand your position. You're not the only person who has articulated it. But you've caused me to reflect, and this is more an observation than a question. The Plentai family ran the Blue Star Restaurant

in Welland—they still run it; third generation—and every time there was a picket line on a lockout or a strike across the road at Page Hersey Stelco, the meals were free, because they understood that if you don't have good union jobs in a community like the one I live in, people don't have money to spend in restaurants, to spend on recreational things. They don't have money to buy furniture, cars.

I appreciate what you're saying, but thank God for the union, because it has created this high-wage economy, which allows us all to prosper. But I appreciate what you're saying, because you're not anti-union. You believe in unions; you're just saying you don't agree with the formula set out in the bill. I'm sure you're not anti-union.

Mr. Mundell: I think it's very important to recognize the democratic rights of both employees and employers to exercise their franchise. That's what this country was based on and built on.

Mr. Kevin Daniel Flynn (Oakville): On page 2 of your presentation, you talk about "smaller employers who may lack resources, legal background and experience." I've got some sympathy for that, because we don't want anyone to be organized who doesn't want to be organized, and we don't want anyone who wants to be organized to not have that right to be organized. How would you suggest we do a better job of getting that information out to the employers, what is right and acceptable behaviour and what is not acceptable behaviour?

Mr. Mundell: You probably need to be better organized.

Mr. Flynn: In what way?

Mr. Mundell: I think the bottom line with any of these types of things—small business right now is feeling an incredible burden. There is so much legislation, so many rules and requirements that you have to follow every day, it's extremely difficult to stay up with it. I think it's very important on the government's behalf to ensure that all businesses, that all employees and employers understand their rights and obligations and, last but not least, have the ability to exercise that franchise, to make that vote, to make your position known whether or not you want to be unionized. It is extremely important.

Mr. Ted Arnott (Waterloo-Wellington): Your industry is under stress on a number of different fronts at the present time, and I know you've responded to those challenges, one at a time. I think your presentation today is very helpful, hopefully, to getting the government members to understand how important this legislation is to your members.

I'm glad you highlighted the issue of some of your members perhaps not knowing what the labour law would be and inadvertently being in a situation where remedial certification might kick in, because that's an important point that I think the government has to consider.

Also, the emphasis on the secret ballot: You as a former municipal politician understand very well that the secret ballot is the surest form of democracy we have in

this province. We repeatedly asked the question yesterday to many of the union representatives, what is wrong with a secret ballot? We still haven't had an answer.

The Chair: Thanks very much for your comments. There is no more time.

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA,
ONTARIO PROVINCIAL DISTRICT
COUNCIL

The Chair: We'll move on to the next presentation. Patrick Little is the next presentation. Mr. Little, you have 10 minutes. Please start any time you are ready. We will all be listening to your presentation right now.

Mr. Patrick Little: My name is Patrick Little. On your agenda it does not indicate that I am the business manager of the Ontario Provincial District Council of the Laborers' International Union of North America, or LIUNA. With me is a member of our Local 837, Hamilton, Brother Jim Evans.

I represent the council of the laborers' union, which represents 12 local unions across the province. These local unions represent approximately 35,000 construction workers. Our union wholeheartedly supports Bill 144 as a return to fairness and balance in labour relations in Ontario and commends the government for making good its election promises to the workers of the province.

Remedial certification is crucial to ensuring meaningful access to workers' rights to organize. It has long been recognized as the only effective remedy to counteract the chilling effect of unfair labour practices during an organizing drive. The Ontario Labour Relations Board has seen many examples of intimidation and coercion in the cases before it, and its jurisprudence in this area reflects this.

In *Winsome Construction*, a 1976 decision of the Ontario Labour Relations Board, the board made the following comment about the impact of threats by an employer: "A warning to employees that the certification of a trade union would result in layoffs and shorter working hours would, lacking any other considerations, tend to have such an intimidating effect that employees might reasonably be expected to refrain from voting for the union no matter what their true feeling about being represented. In such a situation, to vote in favour of being represented by the trade union might well appear to employees to be tantamount to voting themselves out of a job, or at best, a drop in pay."

Since the attacks on the rights of workers by the Harris government, the only remedy available for cases involving unfair labour practices corrupting a vote has been a second representation vote. If this were an effective remedy, you would expect that the success rate of second votes would reasonably mirror that of votes without employer interference. They do not. In fact, only a handful of unions has been able to win a second vote. That's because, as the board has been saying for years and years, there is no way to undo the intimidating effects of

threats and discharges short of imposing certification on the offending employer.

Under the current system, employers have an incentive to threaten and intimidate employees at an early stage of an organizing drive because they can thereby drastically affect the number of cards the union can obtain, and even though the board might chastise the employer and order it to cease and desist, the climate of fear already created cannot be effectively dispelled. The free choice of the worker to union representation is irreparably damaged.

Restoring remedial certification to the Labour Relations Act will level the playing field for all unions—construction and industrial—and for all employees who want access to union representation.

Restoring the board's power to grant interim reinstatement is another very important aspect of Bill 144. In this province, it is not uncommon for employees to be discharged once the employer learns that they are attempting to organize. It is not uncommon, because there is no more effective way to intimidate employees and stop an organizing campaign dead in its tracks. The discharge of a lead supporter sends a clear and convincing warning to others that support for the union will cost them their jobs.

In *Loeb Highland*, a 1993 decision of the Ontario Labour Relations Board, the board made these comments about the effect of a discharge during an organizing drive: "The combination of economic vulnerability of employees and their assumption that an employer does not welcome a union means that a union organizing drive is a relatively fragile enterprise in which momentum is often crucial. Where a campaign is disrupted by an unlawful discharge, the board's jurisprudence under section 9.2 of the act reflects the fact that such momentum cannot easily be restored by the reinstatement of an employee at some point further down the road."

Under the current act, when the board finds that an employee was discharged because of his or her support for a union, the board can order the employee reinstated with back pay. However, it is important to note that these cases typically take months to litigate, and that delay is deadly for organizing campaigns. Workers and their families often cannot pay such a high price for their desire for union representation, nor should they be required to do so.

By bringing back interim reinstatement, the Legislature will provide employees in all industries effective protection from unfair reprisal.

1610

Card-based certification is not a new concept, as was mentioned in an earlier presentation. It was in effect for almost 50 years, from 1948 to 1995, under Conservative, NDP and Liberal governments. It is a tried, tested and true method for determining employee wishes with regard to representation. In fact, the Ontario Labour Relations Board has an extensive body of case law aimed at ensuring that membership cards used in certification applications constitute a fair and accurate representation of employee wishes.

Under the card-based system, an organizing drive can be completed before the employer knows it is happening and thereby reflects the actual choice of the employees regarding representation. Under the current vote system, the employer is notified of an application as soon as it is filed and has the opportunity to intimidate the employees prior to the vote being held. As well, the vote is often held at the employer's place of business or on construction sites, under less than ideal conditions and under the watchful eyes of the employer.

All of these conditions often combine to create an atmosphere of intimidation and result in the employees not daring to express their desire to be organized, secret ballot notwithstanding. As well, the vote system requires already strained board resources to be further expended by dispatching officers to job sites all over the province to conduct these votes.

Card-based certification is particularly appropriate to the construction industry because of the mobile and transitory nature of construction work. The short-term nature of the construction worker's employment makes it much easier for an unscrupulous employer to apply pressure through threats of layoff via crew reductions, reassignments etc., as these activities are not unusual in the normal course of the job and are hard to prove as an unfair labour practice. The Ontario Labour Relations Act has long recognized the unique nature of the construction sector as requiring special legislative treatment, and this provision simply continues that recognition.

These important amendments to the act, as well as the changes in the proposed legislation which remove remnants of the Harris government's anti-union bias such as decertification posting and union salary disclosures, which were so blatantly one-sided and anti-union, are also addressed and make it clear to all that this Liberal government has moved, as promised, to restore fairness and balance to labour relations in Ontario.

In conclusion, our union believes that Bill 144 reflects a balanced and fair approach to amending the act, and we strongly urge that it be given passage through the Legislature as soon as possible.

The Chair: There's about a minute to go. We'll take it to one and a half minutes, so 30 seconds each, please.

Mr. Flynn: On page 2 of your presentation, you talk about the remedial certification. Many presenters to date have talked about that and its impact on employers. Do you understand and accept the responsibility that comes along with that as well, as it applies to trade unions and unions?

Mr. Little: Absolutely.

Mr. Flynn: And you agree with that?

Mr. Little: I sure do.

The Chair: Mr. Arnott?

Mr. Arnott: I don't have any questions, but thank you very much for your presentation.

The Chair: Mr. Kormos?

Mr. Kormos: You'd be good folks to ask about the disparity between union wages and non-union wages, these folks more so than me. Give me a general im-

pression of what the difference is between a union job in your sector and a non-union job, first with wages, and then we'll talk about benefits.

Mr. Little: Wages can run from minimum wage to whatever the market bears, and in that case it usually heads downward to minimum wage. But in non-union construction, for a labourer you could be talking maybe \$10 or \$11 an hour. The existing rate in the ICI sector, the rough average, for labourers is around \$28 an hour.

Mr. Kormos: That worker is paying a lot more taxes than one making \$10 an hour.

Mr. Little: They do. There's one other thing I'd like to say about that. What's probably more important is the benefit package. We have a substantial pension program, and we have a very good health and welfare program. We're very proud of that.

The Chair: Thank you for your presentation.

CANADIAN RESTAURANT AND FOODSERVICES ASSOCIATION

The Chair: The next presentation will be the Canadian Restaurant and Foodservices Association, Joyce Reynolds. Please have a seat. You have 10 minutes in total, if possible. You can speak for 10 minutes or leave some time for questioning.

Ms. Joyce Reynolds: I'll read fast.

Good afternoon. My name is Joyce Reynolds. I'm senior VP of government affairs for the Canadian Restaurant and Foodservices Association. I'm here because I am concerned about the impact of Bill 144 on the 8,300 food service businesses the Canadian Restaurant and Foodservices Association represents in Ontario.

Ontario's \$19.5-billion food service industry is one of the province's largest employers. A stable labour environment is vital to the 22,300 restaurant and food service establishments in Ontario and their 381,000 employees. Attracting new investment is necessary to increase disposable income, on which our sector is dependent. We are concerned that this legislation will discourage economic activity, reduce business investment and lower employment growth in this province.

The food service industry operates on razor-thin margins, with the average food service operator in Ontario realizing a return, before income tax, of 2.2 cents on the dollar in 2003, according to Statistics Canada. Small independent Canadian-owned companies dominate the industry, with a high proportion operated by families. These small independent operators have limited or no experience dealing with the labour relations system. This creates a significant disadvantage and imbalance for employers in the food service industry, who must deal with a Labour Relations Act designed for a larger, more organized workforce.

The minister has emphasized in his remarks that Bill 144 will restore fairness and balance to labour relations in the province of Ontario. We believe it will do the opposite. The legislation removes the cornerstone of democracy and fairness, the secret ballot vote, and

unfairly tips the balance of power in labour relations in favour of unions, which are focusing on the service sector for new sources of revenue and membership.

Changes to the Labour Relations Act should be focused on what is good for employees and the economy of Ontario, rather than what is good for unions. I understand and appreciate the role of unions, and I support the right of employees to choose whether or not they want a third party to negotiate their working conditions. However, I think the laws governing the collective bargaining process must be fair, balanced, and realistic. This means they must give employees a fair say in whether or not they want to join a union. The proposed amendments do not.

CRFA is particularly concerned with the proposed remedial certification provisions, which give the Ontario Labour Relations Board the power to impose certification if it believes the employer has violated the Labour Relations Act. Specifically, we object to the removal of a fair, democratic process to determine if employees want to be part of a union of not.

A union organizer's goal is to sign up as many members as possible. There is no assurance that the organizer will voluntarily provide a full and balanced perspective on the responsibilities that go along with joining a union when signing up a member. They aren't obligated to inform an employee before he or she signs the card of the significance of their signature: the obligations that come with joining such as weekly dues, the new rules that will be imposed in the workplace or the possibility of a work stoppage.

Because a union organizer's goal is to obtain as many cards as possible, it is unrealistic to expect the organizer will voluntarily provide a full and balanced account of the individual's right to accept or reject the union's campaign. Efforts by employers to advise employees of their rights are viewed with suspicion and if an employer provides objective information about the negative impact of unions on their business, including the possibility of employees losing their jobs, that employer could be accused of an unfair labour practice and certified without recourse, regardless of the wishes of employees.

The nature of the food service business requires a great deal of informal interaction between supervisors, managers and employees. Employees often want input from their employer before they make a decision. However, most employers are afraid to communicate with their employees about unions, let alone influence their employees in any way, for fear of an unfair labour practice ruling.

Instead of the traditional concern that one employee could be at a disadvantage when negotiating with a large corporation, the concern in our industry is that the small, independent and inexperienced employer is disadvantaged when facing a huge, well-financed and well-resourced union.

The fact that remedial certification has existed previously in Ontario legislation is not an effective argument for bringing it back. Let's look at what happened in Ontario under Bill 40, when an unfair labour practice

resulted in automatic certification. I will highlight one example of how remedial certification reduced the rights and privileges of employees. In the Royal Shirt case in Ontario, the union began an organizing effort without being invited to do so by the employees and without an inside organizer. The union put leaflets on car windshields in the company parking lot, then parked and observed as a neighbouring employer took a copy of the leaflet into the plant. The union thus established the company's awareness of its organizing attempt.

Two weeks later, the union representatives handed out leaflets and membership cards as employees left work. The next day, three employees were terminated, allegedly for poor performance. The board found that although these three employees were not union organizers, the employer selected them for discharge because it suspected they were union organizers. This was sufficient to cause an unfair labour practice finding.

1620

The discharges for suspected union activity, in turn, were sufficient in the board's view to make it unlikely that the true wishes of employees could be ascertained by a representative vote. Even though only one employee had signed a union membership card, the union was certified, because, under Bill 40, as in the case of the proposed legislation, the union's membership support was irrelevant.

Despite a request for consideration of the certification decision and evidence in the form of petitions signed by over 100 employees rejecting the union, the board ruled as follows: "The employer is the author of these events and ... that conduct may prove costly to all parties involved, including and particularly the employees. Having engaged in that illegal conduct, the employer and the employees are required to now provide the trade union with an opportunity to engage in collective bargaining on behalf of the employees."

In other words, the board was willing to make the employees pay for the employer's unlawful conduct. This case illustrates how remedial certification serves to punish employees and not protect them.

In the third Royal Shirt decision, a group of Royal Shirt employees retained counsel and applied for de-certification of the trade union on the grounds that the union had failed to deliver notice to bargain within the 60-day time period required under the act.

The union's failure to bargain with the employer resulted from its inability to obtain bargaining instructions or appoint a bargaining committee because of lack of employee support for the union, but again the employees were denied a secret ballot vote. According to one board member, and again I quote: "We were asked to take into account the wishes of the employees while exercising our discretion as to whether a termination vote should be ordered. Now, amendments in 1993 to the act make it clear that employee wishes were not a factor to be considered. If that was the wish of the Legislature in November 1993, then it is difficult to conceive that the Legislature wanted us to listen to the employees in June 1994."

Today, the board has the power to order another certification vote in circumstances where the act has been contravened or where a union can demonstrate that it has membership support adequate for the purpose of collective bargaining. Our message is to not repeat the mistakes made by previous legislators in this province. As the Royal Shirt case illustrates, enhancing the rights of unions often results in a downgrading of employee rights.

For the reasons I've just stated, it is CRFA's recommendation that the remedial certification proposal be removed from the bill entirely. If it is retained, we urge you, at the very least, to amend it to avoid an onslaught of frivolous claims of unfair labour practice.

The minister has indicated that remedial certification is designed to address "the worst labour relations behaviour" and "serious" breaches of the law only and is to be used as a last resort, but this intent is not reflected in the legislation. The legislation should explicitly state what types of conduct can trigger remedial certification and how it will be applied. As recommended by the Coalition for Democratic Labour Relations, serious—I'm not going to go through what the serious breaches of the act would include. The coalition has already reviewed those for you, and Terry did so a few minutes ago, and they're in my presentation. I think you're familiar with them now.

I also need to point out that the remedial certification provisions are out of sync with the views of Ontarians. A poll of Canadians, representative of the Canadian working population, undertaken by Leger Marketing in the summer of 2003 assessed attitudes of Canadians about union certification as follows:

—85% of Ontarians believe that a secret ballot vote should be required when forming or removing a union;

—92% of Ontarians agree that employers should be able to communicate the potential impact of a union on their employer to their employees;

—79% of Ontarians disagree with the statement that government should be able to impose a union in the workplace without an employee secret ballot vote.

CRFA believes that the interim reinstatement provision is redundant since the labour relations board has always had the power to reinstate employees. The difference with this provision is that the reinstatement will take place without an official finding that an employer has breached the law. This raises concerns that unions may file unsubstantiated claims of dismissal without recourse or remedy if the employer is found to have done no wrong. As a result, we believe this section should be withdrawn.

The Chair: Thank you for your presentation. I think we have your written material, so we thank you. There's no time for questioning.

UNITED STEELWORKERS OF AMERICA,
DISTRICT 6

The Chair: We will move on to the next presentation, the United Steelworkers of America, district 6. Would you please have a seat, and start your presentation when

you're ready. There is a total of 10 minutes for your presentation.

Ms. Marie Kelly: I want to start by thanking the standing committee for the opportunity to speak today. My name is Marie Kelly. I'm the assistant director for the Steelworkers for Ontario and the Atlantic provinces. I have a few written notes I want to read, and after that, I'll open it up to questions.

I'm here today in my role as an advocate for working people, I'm here as a woman, I'm here as a voter in this province and I'm here on behalf of 90,000 Steelworkers in Ontario. I'm here to talk about the deplorable state of the labour laws and the discriminatory way in which the Liberals are seeking to bring back fairness to workers in Ontario.

The Liberal government announced amendments to the Ontario Labour Relations Act in November last year. Their amendments only extended card certification to the predominantly white male construction sector. I'm sure you've heard a lot in the last couple of days about the history of card-based certification. It was first introduced in Ontario in the 1950s. Through successive governments, whether they be Liberal, NDP or Progressive Conservative, card-based certification for obtaining union representation lasted decades in Ontario. It still exists federally and in other provinces in Canada. It lasted that long because it was recognized as the best method to allow employees to freely exercise the choice of whether to belong to a union.

In 1995, then-Premier Mike Harris gutted the Labour Relations Act and, for the first time ever in Ontario, instituted a mandatory vote for the certification system, abolishing the card certification system as we knew it. This has led to a decline in union certifications in this province. The decline clearly demonstrates that employees in Ontario today are being denied the same right to join a union that was present in 1994 or even in the 1950s.

The Liberals campaigned on bringing back fairness into the labour laws. We're here today to let you know that the voters in this province will hold you accountable to that promise. The need for the Liberal government to restore card-based certification for all workers in Ontario and not just for the construction trades is an issue of fairness and respect for all members of our society. The vote-based system effectively increases the ability of employers to intimidate and coerce employees. To impose a vote after the signing of a union card leaves workers open and vulnerable to employer intimidation and coercion.

The Liberal-proposed changes make it easier for the male-dominated construction sector unions to have access to workers and for workers to have access to the unions and the increased benefits we as trade unions provide, but they discriminate against women and visible minority members of our province, who will have an additional hurdle to get over in obtaining trade union rights.

It's unfathomable to me that in 2005, we would have a government representing workers in this province that

would bring in legislation that is sexist and discriminatory. It's unfathomable to me that in 2005, we would have a government that thinks it's OK to say to the workers in this province, "If you're a white male in the construction sector, your signature is good enough," but to women, "We don't trust your signature. We want to look behind it and test whether or not your signature is valid. We're going to have a vote."

We know you've given back card-based certification to the construction sector because you know it's the right thing to do. It's the only true way to allow employees to assert rights that the labour relations legislation provides to them. We also know you didn't bring it back for all workers because it's the construction unions who have held fundraiser after fundraiser for the Liberal Party.

The Gomery commission has recently shed light on the corruption of the federal Liberal Party, and it uncovers an inexcusable misuse of governmental power and the shady Liberal campaign contributions that went with it. Now we learn that the provincial Liberals are afflicted with a similar disease to that of your federal counterparts: doling out protections to the construction sector in return for sizable Liberal Party contributions.

Access to basic labour rights should not and cannot be doled out to your friends in return for thousands and thousands in Liberal Party contributions. If card-based certification is the only way to protect your friends and supporters of the Liberal Party, then it's the only way to protect all working people in this province. Just as the federal Liberals will soon be held accountable for their corruption, so too will the provincial Liberals be held accountable for this scandal and for the sexist and racist legislation attached to it.

The proposed sexist changes display the bold, irresponsible discrimination that the provincial Liberals have toward the working people of this province. To bring in a law that provides less protection and opportunity for women is discrimination at its worst, and it's just plain wrong.

1630

Statistics show that women employed full-time or part-time in unionized jobs earn more than their non-union counterparts. Statistics also show that women in unionized jobs have significantly begun to close the gender gap to their male counterparts. The Liberals must know that bringing in a law that provides less opportunity for women to join a union forces and confines them into lower-wage jobs with fewer protections and fewer rights.

I remind this government that women make up a large segment of the workforce in Ontario. If you are counting on the women's vote to re-elect this government, then you'd better think again. If you are, then this Liberal government had better rethink its sexist legislation, because women of this province will hold you accountable.

The Steelworkers and our social partners in the communities will do everything to keep this issue alive and on the spectrum. So long as it stands on the books, we won't let you fly under the radar screen. We won't let

you hide from your sexism. Workers in this province expect to be treated fairly. Women in this province demand to be treated equally, including equal access to trade unions and the good-paying jobs they provide.

I have today with me a couple of people. One of them is Shane Martinez from the Ontario Health Coalition. I have a letter here from the Ontario Health Coalition; I'll provide a copy to you. They too are in support of amending Bill 144 so that you provide the same rights and protections to all workers.

Also with me here today I have Kelly Wynn. I'm going to tell you a little story about Kelly. She used to be an employee of DSC until she got involved in an organizing campaign. In that organizing campaign, she was a union supporter, and the employer began intimidation tactics at that workplace. It actually, in a novel situation to me as a Steelworker, threatened its supervisors that they would lose their jobs if the union got in. In turn, the supervisors then turned on the employees and began intimidation of the employees. As a result, we had over 55% of the cards, which we supplied to the board. By the time the vote came around seven days later, after the intimidation and coercion, we lost the vote. Not surprisingly, shortly thereafter when the vote was lost, the union supporters were let go—terminated. Kelly now has employment at another workplace.

The changes and the protections we're talking about affect real, live people. They affect real, live workers. They affect the women in this province, and we expect this government to revisit its legislation and provide the same protections for all workers.

The Chair: There are only 30 seconds. The opposition—just one question, please.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): I want to thank you for your presentation. I think you and I would agree this is certainly discriminatory legislation in that only a few of the workers are given certain rights. On other points, obviously, we would disagree, but I appreciate your very passionate presentation.

The Chair: Thanks very much for your presentation.

CANADIAN AUTO WORKERS

The Chair: We'll move on to the next presentation, which is from the Canadian Auto Workers. Go ahead, Madam. You have 10 minutes.

Ms. Peggy Nash: Good afternoon, everyone. My name is Peggy Nash. I'm assistant to the national president of the Canadian Auto Workers. I'm here on behalf of our president, Buzz Hargrove. To my left is Jenny Ahn, president of Local 40 and a member of our national executive board. To my right is Paul Forder, our director of government relations.

The Canadian Auto Workers represents 265,000 members across Canada, more than 170,000 members in Ontario. More than 35% of our members are women, and our members work in 16 different sectors of the economy. We are here today to call on the committee to make only one change to the legislation that they are putting

forward. That one change is to extend card-check certification to all workers in Ontario.

As others have said, card-check certification was the law for decades in Ontario. Under governments of all stripes, it worked very well and endorsed the facilitation of union organization and collective bargaining as a critical public policy instrument in our province.

Previous administrations encouraged collective bargaining through union certification, negotiation and administration of collective agreements that promoted economic fairness in the workplace and, in turn, supported broad public demand for goods and services in our economy, as well as helping to enforce health and safety rules, create safer workplaces in Ontario, advance human and equality rights, and create better workplaces.

There should be no hurdles placed in the way of a secret, fair, confidential decision-making process for workers to determine if they want to engage in collective bargaining. A card-check system does allow that for workers. The current system, as you know, provides for a very one-sided, undemocratic process. It provides a two-step hurdle that no one else has to achieve in society today. I suggest that those elected around this room do not have to meet the test of a two-step system, achieving more than 50% of the popular vote. We know that once a vote is called—under the current system, within five to seven days—employers have held captive meetings and implied that workers would be laid off on the pretext of an economic downturn, and people's job security has been called into question.

Where else would you find a system where theoretically there are two parties to the vote—that is, those who support the union and the employer, who encourages no support for the union—and yet one party to the vote supervises and pays those who are voting and has votes cast on their premises and their people are scrutineering as the vote takes place? It's not a democratic process as it stands today—we know time after time—and we have examples of workers becoming intimidated through this process. I suggest that no election for a seat in a democratic Legislative Assembly would be seen as fair if it were held under these conditions.

Finally, there is something unsettling about your government's extending card-check certification to one group of employees and not to others. We support the advancement of card-check certification for those in the building trades, but why this arbitrary decision by this government? Surely, if you believe in this important principle, you understand the impact on freedom of association of only extending this to one group of workers and not to others.

I want to call on my two colleagues now to make a few remarks, and hopefully we'll have time for questions.

Ms. Jenny Ahn: I too would like to thank everyone here for the opportunity to spend a few minutes to share with you what it's like as a local president representing workers who look a lot like myself. I have 17 different workplaces across the GTA, and the vast majority of those workers look like me. They are women, they are

immigrants and they are people of colour. They come from traditionally very low-paid workplaces, but because they have a union in the workplace, they have been able to make achievements, make better wages and have better benefits. I think it's important in this province to ensure that we have card-check certification.

As we know, not only this province but this country is made up of immigrants, and we do have a lot of lower-paying jobs like my local, which can make a big difference in terms of changing the economy. When people have money to spend and have a stable job, it definitely makes a difference. I believe that all workers need to have the same rights afforded to the construction sector, as I've seen the difference it makes in people's lives—I think I'm a good example. I've lived in this province since I came to Canada. Belonging to a union has made a tremendous difference for myself and the work I've done, and I'd like to see the government provide this for all workers in this province. It has worked for 45 years, it's not revolutionary and I think it can be done if the will is there.

1640

Mr. Paul Forder: There's something fundamental about you, about us. You are legislators. You have the obligation to make a right law, a better law, a good law that's fair and non-discriminatory. I'm going to suggest strongly to the committee members here that many of you want to do that, except maybe some of the Conservative members who aren't convinced that there are some valid arguments to making things fairer.

I've got this attached to the back of our submission. I want to assume for a minute that every one of you has signed this card—you're intelligent people; you've read it. There are three big Xs that clearly say you want to do this. All of a sudden, somebody says, "Stop. In seven days, what you've just decided to do in joining a trade union—we don't accept that, because you see, you are somehow an imbecile. You don't know what you signed. You've been lied to. You've been deceived." Absolute nonsense. Just the opposite.

I liked Mr. Arnott's comment. He asked why people couldn't answer the question about why they didn't like a democratic vote. There is absolutely nothing fair or democratic or right about a vote that takes place on the employer's premises with the employer controlling the agenda.

I want you to look at page 3 of our submission. You're all politicians. I want you to assume you're going to get re-elected. These are the conditions under which you have to get re-elected—every one of you. You don't have a voters' list, but your opponent does. Your opponent's election workers have unlimited access to the voters for eight and a half hours a day for five working days while they're in the workplace. Your opponent can post as many election signs and distribute as much literature on the premises as they would like, but you cannot. Your opponent also happens to be the voters' employer. You are not allowed to enter the voters' workplace. Your opponent tells voters that if they vote for you and you get re-elected, they may not have a job. You're free to talk to

the voters when they leave the workplace, but of course they're watched by guards and by your opponent. They don't feel comfortable. They don't talk to you too easily. On voting day, you're entitled to go there and sit with the voting officer and your opponent. Your opponent's managers go and bring the workers to and from the voting station and talk to them all the while, and then your opponent and their campaign workers have a celebration after and say, "This is such a wonderful, democratic process under which we've just been re-elected." It's absolutely nonsense.

You wouldn't say that elections in the world—we know where some elections are stolen; we know where some elections are wrong-headed, where people are intimidated. The only way you can stop the intimidation is to take a look at the appendix we have here. Take a look at Ontario Chrysler. We signed 28 cards. They took the workers into one-on-one meetings. Workers were crying. They were told they wouldn't have a job. They fired our organizer and we got four votes. Imagine: All of you have just signed, and six days later we come back and we get one of you to say, "Yeah, we still want to stay with you."

Come on. You're legislators. You know the process. You understand the intimidation. I've got to tell you one thing: Employers can never speak for workers, although they would like to. Workers can speak for workers. Union representatives, bargaining agents can speak for the workers they represent. By the way—and I close with this—once they're in unions, why is it that they don't leave? Because the union negotiates economics for them, eliminates discrimination and gives them opportunities they heretofore have not had.

I know this committee can do the right thing. The government has to do the right thing. This will not go away. We need it restored. We'll have a better society for it, and we put you to that task.

The Chair: Mr. Kormos, 30 seconds. You're the only one.

Mr. Kormos: You then are making it quite clear that you believe that card certification is so important that it should be available to every worker in this province?

Mr. Forder: Absolutely.

Ms. Nash: It's fundamental to the freedom of association. You cannot have a fully exercised freedom of association—a non-discriminatory right in this province—without the right to card-check certification. We have example after example where we've shown that, and there are many other unions who say the same thing.

Again, I would challenge the committee, with respect, to justify why they would extend this important principle only to one sector of the workforce.

The Chair: Thank you very much for your presentation.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

The Chair: We'll move on to the next presentation, the Human Resources Professionals Association of

Ontario. You may start at any time, sir. You have up to 10 minutes.

Mr. Paul Boniferno: Good afternoon. My name is Paul Boniferno. I'm a partner in the law firm McCarthy Tétrault and chair of the provincial government affairs committee for the Human Resources Professionals Association of Ontario. We welcome the opportunity to provide to you advice on Bill 144, the Labour Relations Statute Law Amendment Act, 2005.

For those of you who don't know, HRP AO is a professional association for human resources professionals in Ontario. We have over 14,000 members across Ontario. We pride ourselves in not being an employers' organization, nor are we an employees' organization. Rather, we represent individual professionals who seek to promote the realization of human and organizational excellence in the workplace.

Let me state clearly and right at the outset that HRP AO has been and continues to be opposed to the reinstatement of automatic certification in the province of Ontario. We were asked by the minister to provide him with advice prior to the legislation. When we heard rumours of potential legislation coming out, we advised the minister that we thought it was bad and the wrong thing to do to reinstate automatic certification. When the legislation was introduced, we again, in a letter sent to the minister, reminded him of why the legislation was changed in 1995 and then later amended, and why we believe that automatic certification was not necessary in the province. Let me take you through a couple of our reasons for not supporting this legislation:

(1) Unions may be and are motivated to file unfair labour practice complaints in any certification drive in which they believe they do not have sufficient support to win a vote, and may use such applications as leverage against employers. I can tell you, as a practising labour lawyer in this area, that we're already seeing an influx in the number of unfair labour practice complaints in Ontario without the legislation even changing, which unions believe will give them increased leverage to resolve those matters in which they don't have sufficient support.

(2) We believe the employers' freedom of speech will be impugned, preventing employers from expressing their view with respect to the intervention of a third party in the employment relationship with their employees.

(3) The integrity of secret ballot vote within five days will be diminished, and we will return to instances where employees and their employers will become unionized despite a contrary result at the ballot box, as was the case in the Royal Shirt decision and the Wal-Mart decision, which have been mentioned earlier today.

(4) There will be an overall destabilizing of the balance of labour relations in an environment where employers risk significant consequences for breaching the Labour Relations Act and unions share no corresponding risk for that matter.

In terms of the previous presenter's comments, let me just say that while she had some very strong comments with respect to employers' conduct, stop and ask yourself

how much influence there is in the signing of a card in an organizing drive. Are there any undue influences on employees who actually sign a card simply to get the union organizer off their back and express a different opinion in the secret ballot election five days later?

(5) Experience in the period from 1990-95 has shown us that investors did not invest in Ontario as a result of labour relations legislation, including automatic certification.

The minister and his staff's response to us when we raised this issue to them was that that is purely anecdotal. I suggest to you that any reason for introducing this legislation is purely anecdotal. We have not yet heard one presenter say, "This is good legislation, government. Way to go. Thanks for introducing it." What is the motivation? I suggest to you that the motivation can only be purely anecdotal.

Let me turn to automatic certification for just a moment and say that we are not confident that proposed section 11 changes would address any of the concerns we've expressed regarding the reinstatement of automatic certification. Section 11.1 would permit the Ontario Labour Relations Board to dismiss a union's application for certification where the employer committed an unfair labour practice and where no other remedy would be sufficient to counter the effects of the unfair labour practice.

We are also concerned that the changes eliminate the democratic right of an individual employee to choose whether or not to join a union. You will recall the controversy over the OLRB decision in 1998 regarding Wal-Mart. In that case, the OLRB granted the certification order despite the fact that employees of Wal-Mart had voted 151 to 43 against the union in a representation vote.

I pause there and ask you to review that decision in its entirety and ask yourselves what Wal-Mart did in that particular instance and what their employees did to deserve a union when they had voted against it. They did three things:

First, an employee had spoken up at a morning meeting against the union. When an employee who was a union supporter went to speak up, he was told he couldn't speak at that time because the store had to open. Second, the question was asked by the employees of the manager, "What will happen? Will this store close if it becomes unionized?" Any labour lawyer, management side or union side at the time, would have told you that no employer in this province could get in trouble for not speaking. In that instance, Wal-Mart refused to answer the question. As such, they were automatically certified despite the 151 to 43 vote against the union.

1650

Not only do such orders strike at the heart of individual democratic rights to choose, which we know are important to your government, but it also leads to very unstable labour relations and bargaining relationships. We urge this government to seriously review cases at the OLRB where bargaining units were automatically cer-

tified under this provision prior to 1998, and the survival rate of those bargaining units and bargaining relationships. A bargaining unit that is created by a democratic vote of all employees, as opposed to the decision of a vice-chair at the Ontario Labour Relations Board, has a much better chance of success than one imposed upon employees by the OLRB.

Let me also comment on the card-based certification in the construction sector. Our members are not heavily based in the construction sector. Our concern is that this is the thin edge of the wedge in the sense that we believe there may be motivation for this government two years from now, in an attempt to be re-elected, to extend the automatic certification to other industries, which we believe will have a detrimental effect on the economy and jobs in Ontario.

Finally, we haven't heard much about the decertification posters. We believe it is a mistake to disallow the posting of decertification information in the workplace. Employees who no longer wish to be represented by a bargaining agent are entitled to take steps to decertify. It is helpful for those employees to have the information readily accessible in the workplace. We believe the elimination of these posters again is a strike at the democratic individual right of employees to know their rights in the workplace. We suggest that instead of eliminating the poster, you increase the amount of information provided to employees with respect to their rights in the workplace. This would be consistent with your recent initiative to provide employees with more information about their rights under the Employment Standards Act. We support providing employees with all information about all their employment rights under all relevant legislation.

Thank you for your time. Those are my submissions, and I'm happy to take any questions.

The Chair: There is time for a short question from Mr. Flynn.

Mr. Flynn: On page 3 of your presentation, around the middle of the page, I just wanted to be clear. It says you aren't confident that the proposed section would address any of the concerns, then you go on to say that the OLRB would have the right to dismiss a union's application for certification where it was proven an unfair practice had been committed. Why would that—

Mr. Boniferro: I believe that's a typo and I apologize for that.

Mr. Flynn: Should that read "employer"?

Mr. Boniferro: Right.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: We will move on to the next presentation. It's from the Ontario Public Service Employees Union: Terry Downey. Please start any time you're ready. You have 10 minutes in total.

Ms. Terry Downey: Good afternoon. My name is Terry Downey, regional vice-president of the Ontario

Public Service Employees Union. Tim Little is OPSEU staff.

OPSEU represents workers in every imaginable occupational group and every equity-seeking community across the public service, local agencies, the health care sector and post-secondary education. I will focus primarily on the major shortcomings of this legislation, in terms of what Bill 144 does and also what it fails to do to improve fairness and equity. The latter part of the submission before you addresses the government's section 98 amendments on the reinstatement of the interim powers for the labour board.

First, let me talk about card certification. In its current form, Bill 144 is fatally flawed. It should be amended or defeated. The McGuinty government has put forward legislation that is racist and sexist in its selective reinstatement of the long-standing card certification provisions of the act. You've heard a lot about this. You need to hear a lot more.

Tens of thousands of women, visible minorities and workers with disabilities whom I represent have struggled against discrimination all their working lives. It has taken years to achieve some measure of pay equity, equal access to better jobs and higher education and to start rolling back a host of barriers to equity. Believe me when I say that that struggle continues.

But for the past 55 years, with the exception of a few dark years after 1998 under Mike Harris, one thing we could rely on was access to free collective bargaining if we signed up 55% of our co-workers. Card certification, even in the face of intimidating employers, gave us the opportunity to sit across from our employers and negotiate on a reasonably equal footing.

So why is the McGuinty government discriminating against workers in every other sector of the economy? Why don't you believe that modest wage earners deserve equal access to a union? Why omit those employees who are predominately women, visible minorities and new Canadians from Liberal labour law reform?

OPSEU urges the Liberal caucus to stop looking nervously over their right shoulders for the responses of the corporate sector. It's not massive corporations like Wal-Mart that you should be supporting with your labour legislation. With the billions of dollars they have to fight off union organizing efforts, they need no help from Queen's Park.

Its not only giant trans-national corporations that thwart the expressed interest of their employees to join a union. For OPSEU, our Wal-Mart is the Ontario Lottery and Gaming Commission. Recently at Woodbine Race-track, operated by the commission, a clear majority of employees—well over 60%—signed cards to join OPSEU and gain the right to bargain collectively. These workers speak at least seven languages. They include many visible minorities. In the absence of card certification under the act, a vote was arranged. For the next five days the employer repeatedly used interference, coercion and intimidation to combat the expressed interest of its employees. The employer's campaign was very

aggressive and, sadly, it was successful. The certification vote showed that OPSEU's support had dropped dramatically in one week, from over 60% to just over 30%.

Illegal employer schemes to subvert union organizing efforts and reverse the stated interests of their staff are a regular occurrence. Instead of rewarding the covert union-busting tactics of the Wal-Marts of this world, it's time you stood with equity-seeking communities in Ontario. It's only fair that you permit amendments to Bill 144 to extend card certification to all workplaces that were covered before the Conservatives imposed changes to the act in 1998.

To maintain the prohibition on card certification for most workers that was initiated by Mike Harris helps to perpetuate the low-wage sectors of the economy. Unorganized workplaces are where we find less access to fair wages and health care plans, less protection from abusive employers, fewer workers with pensions and dignity in old age, higher rates of workplace injuries and more discrimination at work.

Believe me, this is no less true of the public sector than it is of the private sector. What does the McGuinty government find attractive about labour legislation that bolsters the low-wage economy? These measures certainly won't help attack your \$5.6-billion deficit. In fact, they exacerbate the stress on the public service. Ask any of our members who work in social services, health care, rehabilitation, social housing and services for seniors; they will tell you all about the fallout when families struggle to find good jobs.

One thing is for sure: This draft of Bill 144 doesn't help with your promise to rebuild public services. It is a good-jobs economy that helps most to build a healthy economy.

I'll turn now to OPSEU's alarm about two areas of needed labour law reform that have been omitted from Bill 144.

Reinstatement of successor rights: As direct employees of the province, 40,000 OPSEU members fully expected to see amendments in Bill 144 that would end discrimination against them. Under the Labour Relations Act, for most unionized workers, if their job is transferred to another employer, they have the right to follow their work and hold on to the provisions of their collective agreement. This is known as successor rights. It's designed to prevent employers from subverting the rights of employees by simply selling an enterprise to another employer where there is no union. In other words, where work is contracted out by one employer to a subcontractor, for example where a company loses a tender to continue specific operations, the affected employees are protected under the act from arbitrarily losing the working conditions, wages and benefits that they have already negotiated.

1700

This was the case for the Ontario public service from 1974, under the Crown Employees Collective Bargaining Act, until this right was stripped from us 10 years ago. The result has been an onerous effort by OPSEU to

repeatedly reorganize former members and enter into protracted negotiations with many private sector enterprises and local agencies that are delivering offloaded public services. Skilled and seasoned public employees find themselves with no job security. New employers, who should be focused on services to the public, instead scramble to cope with labour relations chaos. Time and time again, the public suffers. Need I invoke anything more than the words “Municipal Property Assessment Corp.”—MPAC—to make this point?

Or take the just-announced divestment of Ontario’s emergency air ambulance dispatch as another example. Offloading this vital health care service, aside from the obvious concerns about public safety, means that without successor rights, all these experienced public employees start from scratch with a new employer. They will have no negotiated wages, benefits, hours of work or seniority rights. The jury is now out on how well this vital service will operate in the future.

Cutting off public service workers from their successor rights is another part of the Harris-Eves legacy. Eliminating our right to follow our work was a tool used to undermine the role of the public sector. Since the Walkerton water disaster, most people are aware of the province’s experience with privatized water-testing facilities and meat inspection. We urge the government not to subject even more vital services to the vagaries of privatization, particularly where no employee successor rights exist. Reinstating successor rights for public employees is integral to rebuilding our public services.

As with successor rights, it’s about time to put an end to the many years of discrimination against part-time employees at Ontario’s community colleges. Part-time community college workers are barred from joining a union under the Colleges Collective Bargaining Act. According to the United Nations, this legislated ban is a violation of their fundamental human rights. This is a frustrating and long-standing anomaly in Ontario labour law. Virtually no other front-line workers in any sector of the economy are denied access to free collective bargaining. Comparable part-time workers in Ontario universities and secondary schools, for example, enjoy all the benefits that flow from being able to join a union.

Part-time college employees do important work that is indistinguishable from that of their full-time co-workers. OPSEU is convinced that this double standard, including the lower wages and arbitrary treatment experienced by thousands of part-time college employees, is adversely affecting the quality of education that college students receive here in Ontario.

Therefore, in addition to the amendments to extend card certification, OPSEU urges the government to make changes to Bill 144 to end these two additional types of discrimination. The government should permit public service employees access to the same successor rights as those outside the public service, and it should remove the statutory ban on unionization for part-timers found in the Colleges Collective Bargaining Act.

Lastly, but no less importantly, OPSEU is deeply discouraged that the government has chosen to preserve the

Conservative-era labour code amendments that returned scab labour to Ontario workplaces. We had hoped the Liberals would embrace the merits of less confrontational strikes in Ontario.

The Chair: Thank you very much for your presentation. There is no time for questioning. Thank you for coming.

Ms. Downey: Thank you. We urge you to look at the rest of our documents.

UNITE HERE CANADA

The Chair: The next presentation is Unite Here Canada. You can start any time you are ready.

Ms. Alex Dagg: We’re here on behalf of Unite Here Canada. I’m Alex Dagg, the Canadian director of Unite Here. I have with me Nirmal Randhawa, who is an executive board member here in Ontario.

We’re a trade union that has over 20,000 members in Ontario. Our members work in hotels, food service, apparel, textiles, general manufacturing, apparel distribution centres and industrial laundries. Unite Here’s diverse membership includes many recent immigrants and a high proportion of women.

I’m here on behalf of our membership to say that Bill 144 must be amended. Bill 144 as it is currently written would set up a two-tier system of rights for the citizens of Ontario. There would be one set of rights for construction sector employees and a far weaker set of rights for everyone else. One group of working people would have the right to choose union membership under a system that would reduce the capacity of employers to intimidate them, while everyone else would remain under the United States-styled system set up by Mike Harris and the previous government.

While there certainly are women and visible minority workers in the construction sector, there are vast sectors of our economy where there are much higher proportions of female employees and employees who are new Canadians. Bill 144 will keep them mired in the Mike Harris system, and that is just not defensible.

Our union’s membership is predominantly female and a visible minority. They wonder why this Liberal government would relegate their friends and family members to a second-rate system and a second-rate set of rights. They thought that this government was elected to repair the damage to the fabric of Ontario caused by Mike Harris and his regressive advisers. As for members of the Conservative Party who express such seeming worship of the vote process, let me say that probably none of them has ever been a worker who has had to experience the onslaught of an employer bent on cajoling, intimidating and scaring employees into voting against union membership. And I bet that none of them has ever actually experienced a union membership campaign in the environment put in place by the Mike Harris government.

This government has a very clear decision to make about Bill 144: It can do the right thing by looking to the examples of Bill Davis, David Peterson and even to

Premiers as different as Bob Rae and Frank Miller, or it can do the wrong thing, the very thing it was elected not to do, and follow the example of Mike Harris. If this government does not provide a card-based system of union choice to all Ontarians, it will be enshrining and preserving the keystone of Mike Harris's erosions of the Labour Relations Act.

I think that some members of this government do understand that the Mike Harris version of the Labour Relations Act is far too weak to provide real rights to working people. They get it, but there's a real difference between getting it and doing something about it. Bringing back remedial certification and interim reinstatements is necessary, but not sufficient to provide real rights for working people in Ontario. I urge this government to amend Bill 144 to provide for the card-based system of union choice for people in all sectors of the economy.

I would like to introduce Nirmal Randhawa, who is going to talk a little bit about his experiences. He works at a factory in Mississauga called Silgan Plastics.

Mr. Nirmal Randhawa: Good evening, everyone. My name is Nirmal Randhawa. I came to Canada in 1991. I work for a plastics manufacturing company named Silgan Plastics Corp. This company is a billion-dollar company.

I joined this company in 1992. At that time, it was called Express Plastic Containers. When I joined the company, the working conditions were really bad. Women were abused by male supervisors. We thought to organize a union, when we talked to our brothers and sisters. I was new here, and they told us not to talk about a union at your workplace or you would be fired—the job market at that time was really very bad because of NAFTA.

Some years later, in 1995, the Silgan corporation took over and we thought the working conditions would change. But these big corporations only care about the dollar; they don't have any respect for human rights and for the dignity of workers. The same things were going on.

Finally, in the year 2000, we decided to organize a union. We contacted Unite Here, which we knew represents female and immigrant workers. We talked to them. In 2000, we ran our campaign. When we were in the organizing campaign, we realized how difficult a task it is. In our company, more than 70% of the workers signed cards over the weekend—we started to sign cards on Friday and we finished on Sunday. More than 70% of the people signed the cards because the card-signing was totally secret and was done at their homes.

1710

When we went back to our company on Monday, things were different. The employer had all the rights to intimidate and threaten workers with losing their jobs. They took us, one by one, into the office. They did everything from intimidation to telling some workers that they would get more money. They tried everything to break people. Despite that—that whole week was sleepless for us—we had another campaign. On Monday, we

had the vote, and the employer was sitting in front of us. We feel that voting system is not democratic at all. The employer was sitting and looking at us and we were thinking that the three people who were there from the labour board—we didn't know who they were—would tell the employer who voted yes or no.

When we heard about Bill 144 amending this law and we heard that construction workers are going to get the right to join a union only by signing the cards and that garment manufacturers are not, we felt really bad and we thought we were being treated as second-class workers and citizens. I request this government to do the right thing and provide fairness to all workers, not just some of us.

The Chair: Thank you very much. There is about a minute and a half. Would Mrs. Witmer want to start?

Mr. Kormos—30 seconds each.

Mr. Kormos: I understand the Conservatives' position. They don't want card-based certification for any worker. They believe—and I disagree with them—that card-based certification is flawed, that it isn't a true representation of what the workers want. Look, I don't begrudge building trades workers card-based certification. It seems strange to me that the government somehow must feel there's something flawed around card-based certification because they won't extend it to the broadest range of workers, yet it's not flawed enough to deny it to building trades workers. That's my problem. I'm looking for that answer, as Mr. Arnott would say.

The Chair: Thank you. Now, I'll give the opportunity to the government.

Ms. Wynne: I just want to ask a question about the voting process. I hear your concern about card-based certification. We've heard that argument a number of times. But can we just talk about what could be done to tighten up the voting process? Can you give me some comment on that?

Ms. Dagg: Perhaps Nirmal can add a little bit too, because of his experience, but our position is that we don't think there should be a voting process because we don't think that's fair. We're saying there should be a card-based certification system for all. A vote takes place on the employer's premises. There is incredible ability for the employer to campaign during that period of time, which is what's happening. It needs to be a card-based system. You've done part of it already for construction workers. You need to do it for all.

Ms. Wynne: I understand that.

The Chair: Thank you very much. Mr. Arnott, do you want to say anything?

Mr. Arnott: Why do you think the government is prepared to extend card-based certification to the construction sector and not the rest?

Ms. Dagg: I'm not sure I can speak for the government as to why they've done that.

The Chair: Thank you.

Ms. Dagg: I would like the answer too.

The Chair: The 30 seconds are over. I think you asked the question and you got an answer.

DAVID JAKES

The Chair: We'll move on to David Jakes, business owner. You may start any time you're ready. You have 10 minutes.

Mr. David Jakes: Good afternoon. It's a great favour to be selected to speak today. I would like to thank the standing committee for their choice. I would also like to thank all present for their attention at this time. This opportunity being made available is reassurance that today we live in a democratic society.

I am perhaps here on a different basis than many others. I'd like to introduce my wife, Jeannie Jakes, who came along with me. I'm David Jakes, an Ontario citizen all my life. I am familiar with our people, cultures and economy. I would like to draw attention to the vast number of races and religions that make up the people of our province. I am a member of a worldwide fellowship known as Brethren, who believe in the Lord Jesus Christ as the Son of God and who seek to follow His Word as set out in Holy Scripture.

I realize there will be persons present today who know the Lord and believe in God, and it is not my intention to in any way challenge or set aside anyone else's link with God. We know that God's love is toward all men, and it is a great victory when someone is bowed by it. As for the stand I take, the fellowship of God's son is the only level or basis at which I will be joined with others. Organizations of unions and associations are such that membership would violate my personal conscience, as an unholy link with unbelievers and those with whom I do not partake of the Lord's supper.

Firstly, I would like to call attention to the Canadian Charter of Rights and Freedoms. The charter begins with:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law ...

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society ...

"Everyone has the following fundamental freedoms:

"(a) freedom of conscience and religion;

"(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

"(c) freedom of peaceful assembly; and

"(d) freedom of association."

Thus read the first three paragraphs of our charter. The government has clearly stated in no uncertain terms the freedom that is granted to all Canadians, all residents of Ontario and all races and religions. The charter also states, "Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right ... to pursue the gaining of a livelihood in any province."

Having said these things, I would like to raise the question, how does the provincial government intend to protect the people's right to freedom of conscience and religion in the light of Bill 144? I will explain my ques-

tion. Section 52 of the Labour Relations Act states that provision may be made on the basis of religious conviction or belief. However, this provision is only granted when the board is satisfied that an individual qualifies for such exemption.

This hope is as promising as a tunnel without any light at the end of it. There is no way of even knowing how long this process may take. Does the government intend to pay a person's mortgage, feed their family and pay their bills while that person is subjected to going before a ruthless organization that would readily snuff out a person's livelihood?

In addition, there is as of now no provision for employers. This is something that has to be addressed. It is the duty of this government to exercise its God-given authority to protect the rights of both employee and employer with no third party involvement. The direct relationship between master and servant is set out in scripture, and we uphold this principle in our business arrangements. The scriptural basis is Ephesians 6:5-9.

Perhaps the greatest difficulty I have with this proposed amendment is that the government, as elected and accountable to the people of Ontario, would be transferring further authority to an unelected body that interferes with individuals' personal rights and freedoms without accountability.

The government must state clearly the terms for exemption from union certification for employees and employers alike, and the authority to execute this judgment must be left with government officials with the tools at their disposal to act immediately for the protection of individuals.

In the small family business in which I am an active partner, we have proved the virtue in maintaining good relationships with our employees. They are rewarded with wages and benefits more typically seen in much larger corporations. This has enabled many of our workers to buy their own homes, pay off mortgages sooner and provide a living for their families better than they formerly did. Should our company ever be threatened with union certification, our only option would be to close down the business, destroying loyal relationships developed with our employees and customers. Obviously, this is not in the best interest of any of us, especially those directly involved. This would not be an easy decision but one that would be forced on us. Acts 5:29: "God must be obeyed rather than men."

1720

In summary, I would ask on behalf of all those who share similar convictions that our provincial government consider the social and economical ramifications of such potential situations. We simply ask that the government respect the voices of those who elected them and carefully analyze every angle of this bill. A clear clause for conscience must be inserted for the protection of all parties.

Once again, I appreciate the attention of all present. I trust that the concerns I have voiced will be respected. Thank you.

The Chair: There are 30 seconds each, maximum. Mr. Kormos?

Mr. Kormos: We heard from folks yesterday who had views very similar to yours. You came from Kingston?

Mr. Jakes: Yes.

Mr. Kormos: We appreciate your coming to Queen's Park.

Mr. Jeff Leal (Peterborough): Just an observation. It's interesting: Jean Marchand used God's scripture in the mid-1950s to organize workers at Thetford Mines in Quebec when they were being hit over the head by the owners of asbestos mines. So it's interesting how God's scripture was used in two different circumstances, to support, in that case, a union movement. I'll leave it at that.

The Chair: Thank you very much. The opposition, Mr. Arnott.

Mr. Arnott: I don't have any questions.

Mrs. Witmer: I want to thank Mr. and Mrs. Jakes for appearing before us today and coming from Kingston. We've heard other people, yesterday and today, who have come and who are, I think, your brethren. Is that—

Mr. Jakes: That's right.

Mrs. Witmer: You've expressed the fact that you would like a clause, I guess, inserted in the legislation, a clear clause for conscience to protect all the parties. I think all of you are asking for basically the same thing?

Mr. Jakes: That's correct. We feel that there needs to be, there must be, a clause for employers, employees.

Mrs. Witmer: Thank you very much for coming.

The Chair: Thank you very much, sir, for coming, and to your wife.

I will move on to the next presentation, the Canadian Federation of Students, Jesse Greener.

Mr. Flynn: Could I take 30 seconds? Before the last delegation leaves, it was pointed out by Mr. Kormos the sort of mileage that the last presenters must have travelled to be here with us this afternoon. It was his suggestion, and one that I'd certainly support, that some allowance be made for that by the committee.

Ms. Wynne: Mr. Chair, I believe the subcommittee agreed that that would be appropriate in those circumstances.

Mr. Kormos: Ms. Stokes can deal with it.

The Chair: So we will leave the clerk to deal with the matter. Thank you.

CANADIAN FEDERATION OF STUDENTS

The Chair: We'll move on to the next presentation, the Canadian Federation of Students. Mr. Greener, you have 10 minutes. Please proceed.

Mr. Jesse Greener: It's nice to see those of you whom I know, and greetings to those whom I haven't yet met. My name is Jesse Greener. I'm the Ontario chairperson for the Canadian Federation of Students, representing 250,000 students and the interests of their families across this province.

I'd like to start by just welcoming the changes that are put forward by Bill 144. We certainly are happy to see the repealing of the union decertification posting requirements. We welcome the reintroduction of meaningful incentives to discourage undue interference with workers' rights to join trade unions by giving the OLRB the authority to automatically certify a trade union. We welcome the restoration of the OLRB's authority to reinstate an employee who is dismissed or otherwise penalized for exercising his or her right to pursue union representation. Of course, we welcome the extension of automatic card certification to employees in the construction industry.

While these changes are welcome, we believe that they don't go far enough to ensure that all workers have equal access to pursue union representation. While extending automatic card certification for those in the construction industry is a critical step forward for the workers in a constantly changing and transitory occupation, other workplaces, we believe, deserve the same treatment. Arguments for extending automatic card certification are what I would like to talk about next.

In an unbiased world, both parties, the employers and the employees, through their trade unions, should be seen as neutral players who intervene to allow workers to express their democratic wishes, whether or not to be represented by a trade union. Likewise, expressing this desire should be a simple matter of demonstrating this intent. In other words, simply signing a unionization card ought to demonstrate the sufficient clarity of the individual's desire. Likewise, the absence of a signed card ought to demonstrate with sufficient clarity the individual's desire not to be represented by a trade union.

At best, having a vote after card certification adds a new and cumbersome layer to the process for workers attempting to secure union representation. At worst, the democratic expression by workers of their desire to join a union is itself under scrutiny. For example, questions such as whether the workers knew what they were doing or knew what they were getting into etc. undermine the democratic process, and frankly, this undermines the workers' intent in going into the card-signing process by asking these questions again through a subsequent vote. Asking them one more time to express themselves through another vote would presume that the existence of a signed card is insufficient to determine the will of the employees.

In the real world, however, there is no freedom of bias. I've demonstrated, I think, our perspective as to why there should be card certification even in an unbiased world, but in a biased world we know there is a difference of interests between the employer and the union. They don't always correspond.

In truth, there are significant differences between unionized and non-unionized environments. Workers in unionized workplaces tend to have higher levels of pay than their non-unionized counterparts. Workers in unionized workplaces tend to have better employee benefits than their non-unionized counterparts. The Ontario

Workplace Health and Safety Agency found that nearly 80% of unionized workplaces reported high compliance with health and safety legislation, compared to about 55% for non-unionized workplaces. Another Canadian study conducted in the early 1990s found that union-supported health and safety committees have a significant impact on reducing injury rates. This is in part due to the fact that workers feel more confident to refuse unsafe work if they know they have access to dispute resolution mechanisms should the employer take punitive measures against the employee who refuses the unsafe work.

In an ideal world, employers and trade unions would work together to facilitate unionization in order to raise wages and improve living and working conditions. However, we know that in the real world higher wages cost money. Improvements in working conditions and health and safety compliance also cost money. Consequently, some employers are reticent about having unions represent the employees in their workplaces, and employers can sometimes interfere in workers' right to unionize.

This can especially be true for small service sector workplaces, where often the working conditions are close to the employer and the employer may take it personally if workers seek to have union representation. As is recognized by other changes implemented in Bill 144, the employer can, and often does, interfere with the ability of workers to seek union representation. If these issues exist in larger workplaces, then the pressure is even greater in smaller workplaces, making it much harder for individuals to express their desire to join a union. In the same way that employees may feel less confident to object to unsafe working conditions in small non-unionized environments, so too do employees feel less confident about expressing their desire to join a trade union.

I'd like now to focus on young workers' safety. As we represent younger folks in the society, we have an understanding of young workers' interests. Having rights and being able to exercise your rights are two different things, especially for young workers. It's hard enough for young people, many of whom are trying to earn money for school, to get a decent job, let alone be the new person on the job, largely in a summer working capacity, who is making a fuss about health and safety. A union can create the kind of buffer to allow the young worker to recognize and possibly refuse to undertake the unsafe work.

What does young worker safety have to do with Bill 144? Every day in Ontario an average of 42 young workers are injured on the job. There is a documented link between unionized workplaces and reduced workplace injuries, yet the jobs in which young workers often find themselves are typically not unionized, such as fair and carnival workers, hotel and restaurant staff and other small workplaces. In fact, these are also the kinds of jobs where we find recent immigrants and single parents overrepresented. These are the kinds of workers who, as Statistics Canada notes, are not maintaining their earnings. Extending automatic card certification to the construction industry is indeed a critical step forward,

especially in regard to health and safety issues. However, many injuries occur in the restaurant and service industries as well. Removing an unnecessary barrier such as an additional vote after the initial vote would go some distance in ensuring that workers, even in small workplaces, could also have democratic access, which would well serve to expand the number of unionized workplaces and therefore reduce the number of injuries across the board.

The Chair: Thanks very much for your presentation. There is no time for questioning, but thank you very much.

1730

TORONTO AND YORK REGION LABOUR COUNCIL

The Chair: We'll move on to the Toronto and York Region Labour Council, John Cartwright.

John, have a seat. You have 10 minutes in total to make your presentation. If there is time, we will allow some questions for you and the lady.

Mr. John Cartwright: Thank you, and good afternoon. My name is John Cartwright. I'm the president of the Toronto and York Region Labour Council. With me is Bhupinder Sanghera, who's on the executive board of the Toronto and York Region Labour Council and an organizer and rep with Unite Here.

Bill 144 has some pieces in it that we think are useful and start to heal some of the damage done by the previous Mike Harris government. That, in itself, is fine.

We start from two positions on the question of labour law reform in front of you. The first is that for you to restore all the rights of working people that Mike Harris took away would not cost this Liberal government a dime. It wouldn't cost you a dime. It would not cost you any votes, because working people would be happy that you did it. So we wonder why you can't do that, why you can't restore the rights of hard-working people that Mike Harris took away. You asked us to choose change; as voters, we did so. Why are we only getting a quarter of a loaf instead of what was there before?

The second piece is, why do we say that? It's very simple: In greater Toronto today there are over one million workers who earn less than \$29,800 a year. Some 85% of them are full-time, and this is one of the most expensive places in this country to raise a family. Over a million workers earn less than \$29,800 a year, and they're in the front-line sector all over the place. They're in health care, they're in home care, they're in child care, they're in social services, they're in hospitality, they're in light manufacturing.

We held a series of meetings around the tsunami crisis and how to respond to that. A number of our union members are Tamil and come from Sri Lanka or Malaysia. There was a fellow sitting across the table from me who was a manufacturing worker—had been in a unionized environment for nine years—raising four kids on \$9.80 an hour. That translates to less than \$20,000 a

year. Is that the kind of thing that you as the government feel is all right? The fact that working families' incomes dropped in the last decade of the 20th century—on average, in real wages, two-income families dropped 13%; single-income families dropped 17%. Is that the kind of thing you want to see happen?

It's very clear that if you want to correct that and give people a chance to raise their standards, the ability to have a union and to have the tools to get a union, if people wish, is a crucial element. Unions are the best anti-poverty program. They're the best anti-discrimination program. They're the best program for any government to invest in, because it doesn't cost it a penny.

We lay out a number of things that have to be done in terms of restoring all those different rights. The main focus, as I'm sure you've heard from many different unions, is about extending the right to organize through card-check to every sector of the economy. We say that because it's crucial.

I'm a construction worker. I was a business manager to the central Ontario building trades council for 10 years and I know what happened once the law was changed and people were required to go through a vote. I salute the government for understanding that that had to be fixed, because it was a travesty. But what I found in these last three years as head of a labour council is that, in sector after sector as I deal with workers, many of the same issues face those workers as faced me as a construction worker and the folks I represented. The elements of contingency, of unstable work and so on, are all there in all kinds of other sectors. The crucial element is, how are people going to have the tools to better themselves? That's the crucial question. And that five days of a vote period is a reign of terror that's instigated on most workers in most workplaces. We've gone through a whole number of examples of that, and I'm sure you've heard that from elsewhere.

Last November, we held two forums in Toronto to hear what non-union workers are going through. We selected 10 stories and put them in a book of shame, which we've passed out to you as well. That kind of stuff that's happening to the hard-working people in this city in the 21st century is unbelievable. It should never happen.

In two days, we celebrate the day of mourning. We're going up to Woodbridge that morning in front of the monument where Italian workers have been killed. People gave their lives because they thought they could make something better for their families, and yet the only way they found they had power to actually make a difference was by having unions to stand up for them. That's why, if this government cares about people improving their lives, they'll do that.

Bhupinder is an organizer, and the kinds of things she runs up against in real life when she's talking to workers about joining a union are what you have to hear, and you have to answer to yourself: Is this what you want to be happening to your constituents, your family, to the future workers of Ontario?

Ms. Bhupinder Sanghera: My name is Bhupinder Sanghera. I'm a Unite Here staff rep, plus an executive member at the Toronto and York Region Labour Council. I sit on the Brampton-Mississauga and District Labour Council as an executive member too.

I have been in Canada for 29 years, and I was involved in organizing a union when we had automatic card signup certification. I am involved now in organizing a union where we have to go through a vote. The difference is amazing.

I organized when we signed the card. When members signed a card, they made a commitment. But now, if people phone me—and a lot of people do, because I speak three or four different languages. A lot of women phone me because Unite represents a lot of immigrant women with low wages. They phone me and say, "Keep it secret. My employer should not know that I am phoning you. We do need a union. Our health condition, the intimidation and harassment at the workplace—we have to have a union." When we go to approach those employees, we sign hidden cards, but people beg us and say that their employers should not know. Otherwise, they are going to fire them. We tell them that to organize a union is their right, to not be afraid.

One of my colleagues shared his experience. When they go to work, they are intimidated. They are threatened by employers that they are going to close the plant. People who work for \$8 or \$7.50 or \$9 an hour don't want to lose their jobs. So sometimes about 80% sign the card. I had an experience in Brampton and Mississauga with some companies. When it came to voting, we lost the vote.

I just want to request that people should not be afraid to have their job protected. They should have a right to form a union and have the freedom to go. Once they sign the card, they make a commitment. They should not go through this vote. People work with supervisors and bosses and are afraid to lose their jobs. They have to feed their families. So they don't take a chance to go vote and form a union, even if they want to have a union.

Mr. Cartwright: So what I'm going to say in conclusion is this: Anybody who says, "What's wrong with a free vote?" should look at page 4 and understand what happens in a workplace. There is no such thing as a free vote when there's no right of free speech, no right of free assembly. When people have to do things in secret, when the governing party controls everything that happens in people's lives, there is no such thing as a free vote, and anybody who suggests so has never been through a union drive and lived the life that is there.

Secondly, you have an opportunity to help people improve their lives. You can choose to either be on the side of Wal-Mart, which shows its contempt for everything that Canadians are about—our laws and the standards that working people want to have—or you can side with working people.

We thought, when you were elected as a government, you were going to be on the side of working people. You have a chance to show that with amendments to Bill 144.

The Chair: Thank you very much for both your presentations. There is no time for questioning, but we thank you.

1740

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 95

The Chair: We'll move to the next presentation, from the asbestos workers, Local 95. Is Fred Clare present?

Please have a seat, sir. You can start any time you're ready. You have 10 minutes in total.

Mr. Fred Clare: I don't think I'll take 10 minutes of your time. I'm sure you've heard pretty well everything over and over again. However, let me give you a little bit of my background. I'm the business manager of the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, and also a member of the building trades. My local covers the whole of Ontario. I'm a new business manager and a new agent; I've just been involved over the last four years. However, my background goes back extensively, for the last 35 years, in the construction industry.

The construction industry is a unique situation. After the job is finished, the workers are either transferred to other sites or laid off. This in itself creates a problem when those workers want to have the protection of a union and have a union speak up for them. The word "balance" has been used an awful lot since this government took office; democracy, fairness. Again, I applaud the government in looking at our situation as far as organizing the unorganized.

One of the worst feelings I ever had, not only as a union rep, was a situation in the Sarnia area where we tried to organize a company. Over 85% of the employees in the company signed to join the union. The employer at the time was elsewhere. He was in a pool tournament, I believe, in Las Vegas. When he found out what was going on, he flew back and hired, on the day of the certification, relatives and people he knew. For four hours, they were on his payroll. I could not believe that they counted as part of the bargaining unit just because they had been on the job site that particular day. I couldn't believe that nobody said, "Obviously, you're trying to make a mockery of the system." However, that's exactly what happened.

The construction industry needs card-based certification. I feel for every other representative in here. I have the greatest and utmost respect for members sitting around this table—Peter; Wayne Samuelson back there—but our situation is dire. I would like to see that this bill is put forward and passed. That's all.

The Chair: Thank you very much. There are one and a half minutes each, if there are any questions.

Mr. Flynn: Thank you, Mr. Clare, for your presentation. We've heard from a number of groups, and I'm starting to feel a bit like Goldilocks—it's either too much

or it's not enough—but you seem to be saying that it's about right. If I understand what you've said, you agree that we should bring back remedial certification and interim reinstatement and get rid of the decertification posters and salary disclosure. Your preference, as I understood, would be to have card-based certification for all, but failing that, to have it in the construction sector.

Some other groups have come forward and said, "Either amend this bill or defeat it." Would you agree with that?

Mr. Clare: I cannot sit here and say, "I need this bill. I really need this bill." That's the bottom line.

Mrs. Witmer: Thank you very much, Mr. Clare, for your sincere presentation. Would you just tell me one more time why you need this bill?

Mr. Clare: Fairness, democracy. The workers who want to join a union should have that right, without interference from a contractor who obviously comes in and interferes with the process.

Mrs. Witmer: What about the intimidation that is sometimes experienced by people on the other side? I don't know who they might be. But we heard about that yesterday, intimidation of employees. How do we guard against that?

Mr. Clare: Intimidation from the unions?

Mrs. Witmer: Either from other employees or union organizers. That's what we heard yesterday. We heard about it in the drywall sector.

Mr. Clare: Speaking for myself and my organization, intimidation is not part of our way of saying, "We will represent you." How can I say to somebody, "I want to represent you," if I'm going to be intimidating? Those days are gone. How about intimidation from the employer? This is the reality.

Mrs. Witmer: I think it happens on both sides, Mr. Clare.

Mr. Kormos: Thank you, Brother Clare. I appreciate your coming here. I hear what you're saying. You'd be a darn fool not to ask this government to pass this legislation. You represent your workers, who are in the building trades, and this grants card-based cert to the building trades.

The Tories are very clear: They don't think card-based certification is fair or democratic. You obviously disagree with that.

Mr. Clare: I do.

Mr. Kormos: You think that card-based certification is fair, that it's an accurate reflection of what workers in a particular workplace want.

Mr. Clare: Exactly.

Mr. Kormos: And it's a legitimate way of assessing that. Then why, in God's name, wouldn't this government give card-based certification to every worker in this province, if it's a fair way of assessing the will of those workers? My goodness.

The Chair: Any comments?

Mr. Clare: I agree with you, Pete.

RESIDENTIAL CONSTRUCTION COUNCIL
OF CENTRAL ONTARIO

The Chair: We have another presentation, the last one for the day, from the Residential Construction Council of Central Ontario: Mr. Richard Lyall.

Mr. Richard Lyall: We appreciate this opportunity to speak with you about this bill. My name is Richard Lyall, and I'm joined by my colleague Jason Ottey. We're here on behalf of Rescon. Rescon is an association of residential high-rise and low-rise builders. It has a number of affiliated associations, including ORCCA, TRCLB, DRCLB and the MTABA, which are directly involved in collective bargaining, and all of which have expressed their support for the bill.

Given the understandable time constraints, my remarks will be largely concerned with what we consider to be the bill's most important aspect, which relates to the residential sector of the construction industry. As you know, the bill would make permanent provisions concerning how collective bargaining is conducted in the GTA-central Ontario area. These provisions address a distinct and complex problem in a unique industry. In other words, it's not a system which can be readily applied to other sectors.

Yesterday, Mr. Jim Murphy of the GTHBA outlined the economic importance of the home-building industry in the province. He referred to the positive impact that the collective bargaining provisions have had, especially on the new home and condo buyer. He noted that the two test rounds of bargaining under the new system, in 2001 and 2004, demonstrated without a doubt that it works. We agree. In addition, I would like to elaborate further on what the labour and management authors of the solution actually accomplished.

For starters, the residential provisions are the product of considerable creative thinking and personal commitment on behalf of both labour and management, along with the invaluable assistance of government officials. All parties had to overcome biases and preconceived notions of what was possible in collective bargaining. All the parties involved had to exercise considerable trust and take singular and collective risks, given the new ground being crossed.

In total, the effort was simply unprecedented. Their trust was not betrayed. This in no small way has contributed to the fact that the industry has quietly worked in comparative harmony over the past six years, making a lasting contribution to the economy.

1750

What else has it meant aside from the obvious economic benefits for all parties? I have two examples. First, it has provided badly needed protection for new homebuyers. It has eliminated the fear many new homebuyers once held with respect to market stability. It has saved others less knowledgeable from a rude awakening of facing unscheduled homelessness on their own.

Second, the certainty and transparency of the new process has contributed enormously to the ability of

labour and management to attract young people to careers in construction. Make no mistake about it, eliminating the reputation for frequent disruptions has made the industry that much more attractive a career choice. It has helped crush the assumption that young people are not interested in careers in construction. Stability is particularly important for younger people at the beginning of careers when they are starting families and buying their first homes. This is important. As we know, homes are the single biggest purchase for the vast majority of Ontarians.

Some of the other provisions of the bill are obviously more contentious and will remain so regardless of what we or others might think, or what the outcome will be. With respect to balancing labour relations in the province, we do not presume to know where exactly the line should be drawn, or if one indeed exists. We can say that construction is a unique sector, as evidenced by its special status in the Ontario Labour Relations Act. Also, labour mobility issues in construction are unique compared to the relatively more sedentary characteristics found in other settings.

Having noted this, the two issues in particular that stand out are card-based certification and remedial powers.

The provisions concerning card-based certification are well known to the residential construction industry. In our view, contentious certification cases will still invariably result in extensive litigation, regardless of whether there is a secret ballot or a card-based process. We would note the fact that our industry has performed well under both regimes.

The bottom line is that there are valid arguments which support both approaches. In construction, with its unique mobility issues, there are particularly good reasons to support card-based certification. In our view, at the end of the day, the Legislature is in the best position to determine what is needed to ensure fairness.

With respect to remedial measures, the record in our industry would show that neither labour nor management can claim to have clean hands with respect to incidents of abuse in organizing drives over the years. That is why further OLRB remedial powers are considered necessary by many. In our opinion, the maintenance of fairness and the rule of law both require strong balanced remedies. Because the remedial powers would determine what might otherwise happen, they should only be applied after careful consideration of the particular facts and legal jurisprudence, and in the end, be neither arbitrary nor discriminatory.

The integrity of a system requires the utmost care and respect on the part of those charged with determining outcomes. While the rules applied must be as balanced and as fair as possible, no law can make that certain.

In closing, the residential provisions of the bill demonstrate that great things can be accomplished in labour-management relations with sufficient creative thinking and courage. It is rare when complex problems can be resolved with such convincing results. For this reason

alone, the bill should be passed and the accomplishment recognized.

The Chair: There are three minutes left for questioning, and I would start with Mrs. Witmer, please; one minute each.

Mrs. Witmer: Thank you very much for your presentation. I noticed here that in the summer of 2003, Leger Marketing took a look at the issue of union certification, and 85% of Ontarians believe a secret ballot vote should be required when forming or removing a union. Why do you think, then, we should not be responding to the will of those who believe it most accurately reflects an individual's freedom of choice?

Mr. Lyall: That's a good question, and it's a difficult one. In our experience, we can see the justification for maintaining a vote, and we can also see the justification for the card-based system. One thing we do know is that we operated under a regime where a card-based system was in place for many years, and it didn't seem to have a negative effect, at least in our industry, in our sector, which is what I'm familiar with. Certainly, the arguments with respect to labour mobility in construction and the fact that workers are here today and gone tomorrow—they move from site to site—provide additional constraints on the ability of union organizers to do what they do relative to other areas. I think that's what was contemplated originally when the card-based system was devised.

The Chair: Mr. Kormos?

Mr. Kormos: No, thank you.

The Chair: Ms. Wynne?

Ms. Wynne: Thank you very much and thanks for your support for the legislation. Some of the stories we hear about the voting process do concern me. I have a question for you. Have you got any suggestions about what could be done from the government's perspective in terms of tightening up the voting process? Are there changes that could be made that would make that a better process, in the cases where it's not?

Mr. Lyall: I can only comment personally. My experience shows that there are always ways of improving systems if one thinks creatively enough about it. I've heard comments that votes being held at workplaces are particularly intimidating to workers. So there might be something there that could be done to offset some of that intimidation.

The Chair: Thank you for your presentation. Thank you to all of you for participating.

We are going to resume meeting on Friday at 9 o'clock in Kitchener. Before we depart tonight, I believe there is some discussion about the Kitchener meeting.

Ms. Wynne: I understand there are some spaces free in our schedule in Kitchener, and I understand there are some requests to speak. I'd like to ask for the consent of the committee that we allow those people whose requests came after the deadline to speak, given that there are spots.

The Chair: If they wish to come to Kitchener.

Ms. Wynne: If they wish to come to Kitchener.

The Chair: That's a request. Is there any discussion on the suggestion?

Mr. Kormos: Perhaps Ms. Stokes can assist. I'm grateful for her work in getting this information out to us. At least a chunk of those people insist that they had presented their request in a timely fashion.

The Chair: Yes, six of them, I believe.

Mr. Kormos: That's quite frankly persuasive to me. Ms. Stokes didn't get them but they insist they did and there's no reason for them to not be truthful. Then that leaves three that weren't part of that package. If we have time, I'm agreeable to hearing them. I don't care what views they represent.

The Chair: Let me hear from Mr. Arnott, and then we'll go around again.

Mr. Arnott: I have in front of me the report of the subcommittee. The only question I have is, in doing so, would we be contravening what was agreed to by the subcommittee?

The Chair: Yes, there is no question on that, and that's why we are discussing it. My understanding is that the committee can make a decision, just like anything else, if there is enough support within the committee.

Ms. Wynne: Actually, I have written out a motion. I had thought if we could get agreement, I would go with that, but I have brought a motion and my understanding is we can change—

The Chair: I would like to hear the motion.

Ms. Wynne: Given that there are open spaces in the scheduled hearing on Bill 144 in Kitchener, Ontario, on Friday, April 29, 2005, I move that the committee accept the requests to speak received after the deadline, and that these deputations be scheduled within the agreed-upon day up to 4 p.m.

I apologize for the tortured syntax. That is my motion.

The Chair: Is there any discussion?

Mr. Kormos: I obviously support the motion. I had concern about the fact we were unable to use consent to achieve this end. Of course we have committee hearings, people are invited to attend them, and then when we've got open slots, to tell people too bad, so sad, they can't say what they want to say, I don't think is fair.

1800

Mrs. Witmer: It seems that at least the Liberals and the NDP have some idea as to who has made submissions. Nobody has contacted me, so I'd really appreciate knowing who has asked, who was late.

The Chair: It's my understanding we all got a list of the nine.

Mrs. Witmer: I don't have a list.

The Chair: Did you provide one to Mrs. Witmer?

The Clerk of the Committee (Ms. Anne Stokes): It was sent to your office.

The Chair: Can we provide one now? Ted, do you have a copy? Let's give a copy so you can look at it. The clerk did notify me earlier today that everyone got a copy. It's quite possible that sometimes there is—

Mr. Khalil Ramal (London-Fanshawe): Can you make sure they're not the same people coming under a

different name and a different umbrella presenting the same issue, or the reverse of that? Today was a lot.

Mr. Kormos: It happens from time to time.

The Chair: I think we can resolve this issue.

Mr. Arnott: I have another question, Mr. Chairman. We have the subcommittee report, which establishes the agreement that was made by the three parties. A lot of the groups that are interested in this bill can easily access a list of the committee members, so they might ask committee members, "Can I present?" in theory. Of course, you would say to them, "No, unfortunately the subcommittee has come to an agreement and the committee has ratified that agreement," and now we're changing the rules, literally in midstream.

The Chair: Let me try to clarify. I heard the arguments. I think I can summarize, if I may. The argument made is that six, seven or eight of them, the first group, did notify the clerk within the time and somehow the clerk is not aware of that notification. Therefore, there is that argument. There are three, I believe, in addition, who we know for sure submitted their names after the due date. I am also told by the clerk that it's up to the majority of the committee to make changes. Am I correct in that? Therefore, there is a motion on the floor that is legal and proper. Of course, you can make arguments as you please.

Ms. Wynne: I would like to make the point that, yes, the committee can, with a majority, make the decision that it chooses to make. Secondly, the reason I'm bringing this forward is that there is space within the allotted time that the subcommittee suggested for hearings and that we agreed upon. There is time available for these folks. So I'm not distinguishing between the people who said they got their request in on time and the people who didn't. I'm saying there's time in the agreed-upon hearing schedule and it seems to me that it makes sense. Whether those people are going to bring forward arguments we've heard before or not, this process exists so that people who have something to say have the opportunity to say it.

The Chair: I'll go back to the opposition.

Mr. Arnott: Not to belabour the point, but we now have the list and it appears that the government has lined up a number of unions that will speak in support of the bill. I'm sure the government is quite concerned about the number of unions that have come forward to speak against the bill, so they've made an extraordinary effort to line up some unions on Friday that may express support for the bill.

Mr. Flynn: Prior to the previous speaker, I didn't know who was on the list. All I know is that some people from the public have asked to address this. We have the space; we have the time. There's absolutely no reason in the world we shouldn't accommodate them. I don't know if these people are pro-bill, anti-bill or neutral.

The Chair: After Mrs. Witmer, I will ask for the vote.

Mrs. Witmer: I can probably help clear it up because the letter has come from Mr. Patrick Dillon. He has made a request that all of the following groups would be in a position where they could make representation. So I guess that tells you that somebody has lined up speakers on behalf of the bill. If we want to stack a day with people who are for the government bill, I guess that's fine, if that's who they are.

The Chair: I've heard all the arguments. I believe there is a request to take the vote. I will ask, those in favour of the motion? Those opposed? The motion carries.

I will ask that the clerk contact those people and ask them if they wish to come to Kitchener.

The Clerk of the Committee: Can I clarify one point? There are 10 people on the list and we actually would have eight spots, so if I could ask for a prioritized list.

The Chair: There might be two extra, depending if they wish.

Mr. Kormos: If I may, some of those groups may know each other well enough to be willing to share. I just suspect that.

The Chair: You may wish to present your list to the clerk.

The committee adjourned at 1805.

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président

Mr. Mario G. Racco (Thornhill L)

Vice-Chair / Vice-Président

Mr. Khalil Ramal (London–Fanshawe L)

Mr. Ted Arnott (Waterloo–Wellington PC)

Mr. Ted Chudleigh (Halton PC)

Mr. Kim Craitor (Niagara Falls L)

Mr. Peter Fonseca (Mississauga East / Mississauga-Est L)

Mr. Jeff Leal (Peterborough L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Mario G. Racco (Thornhill L)

Mr. Khalil Ramal (London–Fanshawe L)

Ms. Kathleen O. Wynne (Don Valley West / Don Valley-Ouest L)

Substitutions / Membres remplaçants

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Clerk / Greffière

Ms. Anne Stokes

Staff / Personnel

Mr. Avrum Fenson, research officer

Research and Information Services

CONTENTS

Tuesday 26 April 2005

Labour Relations Statute Law Amendment Act, 2005, Bill 144, <i>Mr. Bentley /</i> Loi de 2005 modifiant des lois concernant les relations de travail, projet de loi 144, <i>M. Bentley</i>	SP-973
Carpenters' District Council of Ontario; United Brotherhood of Carpenters and Joiners of America.....	SP-973
Mr. Ucal Powell; Mr. Charles Calligan	
Canadian Federation of Independent Business	SP-975
Ms. Judith Andrew; Mr. Satinder Chera	
Ontario Restaurant, Hotel and Motel Association.....	SP-977
Mr. Terry Mundell	
Labourers' International Union of North America, Ontario Provincial District Council	SP-979
Mr. Patrick Little	
Canadian Restaurant and Foodservices Association	SP-980
Ms. Joyce Reynolds	
United Steelworkers of America, district 6.....	SP-982
Ms. Marie Kelly	
Canadian Auto Workers.....	SP-983
Ms. Peggy Nash; Ms. Jenny Ahn; Mr. Paul Forder	
Human Resources Professionals Association Of Ontario.....	SP-985
Mr. Paul Boniferro	
Ontario Public Service Employees Union	SP-986
Ms. Terry Downey	
Unite Here Canada.....	SP-988
Ms. Alex Dagg; Mr. Nirmal Randhawa	
Mr. David Jakes	SP-990
Canadian Federation of Students.....	SP-991
Mr. Jesse Greener	
Toronto and York Region Labour Council.....	SP-992
Mr. John Cartwright; Ms. Bhupinder Sanghera	
International Association of Heat and Frost Insulators and Asbestos Workers, Local 95	SP-994
Mr. Fred Clare	
Residential Construction Council of Central Ontario	SP-995
Mr. Richard Lyall	