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Thursday 3 May 2007

Journal des débats (Hansard)

Jeudi 3 mai 2007

Standing committee on the Legislative Assembly

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toxines et des polluants)

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Thursday 3 May 2007

Jeudi 3 mai 2007

The committee met at 1002 in room 230.

**PROTECTING VULNERABLE WORKERS
ACT (EMPLOYMENT AGENCIES), 2007**

**LOI DE 2007 SUR LA PROTECTION
DES TRAVAILLEURS VULNÉRABLES
(AGENCES DE PLACEMENT)**

Consideration of Bill 161, An Act respecting employment agencies / Projet de loi 161, Loi concernant les agences de placement.

The Chair (Mr. Ted McMeekin): Welcome. It's good to see so many smiling faces first thing on a—what's today?—Thursday morning. Today is the day when we hear public presentations with respect to Mr. Dhillon's private member's bill, An Act respecting employment agencies. We'll call for a brief opening statement from Mr. Dhillon, and then we'll go to the public hearings.

Mr. Vic Dhillon (Brampton West–Mississauga): Good morning, Chair, committee members and presenters. First of all, I want to thank everybody from all parties for helping me in this very important bill. I want to thank the members of the public and the business community who have assisted me as well by making their contribution.

I just want to start by saying why I presented this bill. My riding of Brampton West–Mississauga and Brampton and Mississauga are home to many newcomers who come to Ontario, and their first effort for employment usually begins through a temp employment agency. Since being elected, and prior to being elected, I've heard first-hand the horror stories of people not being paid for work done, not getting appropriate vacation time, not getting appropriate breaks, not getting overtime pay or minimum legal wage. Those are just a few symptoms of this whole problem. As legislators, it's our job to prevent these things from happening.

I'm very thankful that I've been given the opportunity to present this bill, and I very much look forward to the input of all the stakeholders and people who are here to present, in the hope that I'll be able to bring forth appropriate amendments to address this long-overdue problem. Thank you very much, Chair.

The Chair: Thank you, Mr. Dhillon. We look forward to hearing what the public has to say about your idea.

WORKERS' ACTION CENTRE

The Chair: We'll begin with the first presenter, Parkdale Community Legal Services. Good morning.

Ms. Karen Dick: First of all, I'm not Elisabeth Bruckmann from Parkdale Community Legal Services.

The Chair: I was going to say you don't look like Elisabeth to me.

Ms. Dick: Elisabeth called earlier and left a message with Tonia's office that we're going to be switching places. I'm Karen Dick from the Workers' Action Centre.

The Chair: Okay, and that's okay with Elisabeth?

Ms. Dick: We're submitting a joint submission. We work in partnership.

The Chair: Okay, very good.

Ms. Dick: First of all, thank you for giving us the opportunity to address the committee on the need to regulate the temp industry and particularly for the attention that Bill 161 has brought to the plight of temp workers. In particular, thanks to Mr. Dhillon.

For those of you who don't know the Workers' Action Centre, we're a workers' rights organization in Toronto committed to organizing non-unionized workers, particularly temp workers and other low-paid workers in precarious work. Most of our members are workers of colour, new immigrants and women workers.

For the past seven years, we've been working with temp workers and documenting the violations that are unfortunately quite rampant in this unregulated industry. We see an overrepresentation of women, immigrants and racialized communities in the lowest-paying sectors of temp work, as Mr. Dhillon has pointed out. We see fly-by-night agencies working out of basements and apartment buildings where workers are not paid at all for their work. We see people being paid well below the legal minimum wage.

This is an industry where temp workers already make 40% less than their permanent counterparts. Most temp workers we need have never been paid public holiday pay. We regularly see illegal deductions taken from people's wages: administrative fees or penalties when people don't show up for work. We see fees or fines for placement agencies, which is a barrier to workers being hired permanently by client companies. Workers are often sent home without the three-hour minimum pay they're entitled to under the law.

More recently, we're seeing many temp workers being misclassified as self-employed, and then there's the barrier that many unstable workers face, that they don't have enough hours to access employment insurance benefits and it's very difficult to get your record of employment from an agency that says, "We're not actually letting you go, but we may not have work for you for six weeks." So violations are rampant across the board.

I want to tell you about the experience of a member of ours. Her name is Sybil. Sybil worked for a government organization through a temp agency. She worked eight hours a day doing data inputting at an office. Her contract told her that she was self-employed and therefore not entitled to overtime pay, vacation pay or public holidays. Like most temp workers, Sybil just wanted to be hired permanently by the government organization she was working for as a temp. She wanted to receive the same wages and benefits as her permanent counterparts. When she asked the client company to hire her on permanently, they said, "We can't because we'd be fined by the temp agency if we did." Sybil offered to pay that fine because she really wanted the job. Instead, her assignment ended and she was left with \$2,000 in unpaid wages.

Sybil didn't file a claim at the Ministry of Labour, and if she did, because they only look at cases on an individual basis, it is very likely that that temp agency is still not paying workers their public holiday pay, their overtime or their vacation pay.

Having looked at Bill 161's licensing scheme to see if would address the issues faced by temp workers, we believe it would not, and there are two primary reasons for this. The first reason is that the licensing scheme relies on employment standards enforcement, and that enforcement is not working for most workers but particularly for temp workers, who are most vulnerable. Most temp workers never come forward to file a complaint, and there are many reasons for this. Workers have no confidence in a system that's not protecting them in the first place. Many work through many different agencies and they find the same violations across the board—never getting paid public holiday pay, being set up as self-employed—and wonder why the system doesn't protect them in the first place.

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Most temp workers never report violations for fear of not getting another assignment with that agency, so you can imagine that if you speak up or ask for your pay, the agency is just not going to call you back. Many temp workers we work with face language barriers and so have difficulty in the first place even accessing the Ministry of Labour and navigating that system.

There's also the problem with our lack of knowledge and understanding of how the law works. In Sybil's case, she knew that something was wrong—there were a lot of entitlements that she wasn't getting—but when she first called the ministry, she mentioned that her contract said she was self-employed. So she was told by the intake officer that if she indeed was self-employed, she would not be able to file a claim. Sybil, like most of us,

wouldn't know how to discuss these issues, wouldn't understand that she indeed was not self-employed, so she chose not to pursue a claim.

For the small numbers of temp workers who do file claims, 80% settle for less than they should have been paid in the first place. Those violations are not tracked, which wouldn't stop the renewal of a licence because it wouldn't be on the record. So if employers are being rubber-stamped through with licences, it's only to give them more confidence to break the law.

We also need proactive inspections. There are only 20 officers to inspect over 350,000 workplaces, with close to six million workers who rely on the Employment Standards Act in Ontario. With that current lack of resources, there's no way that inspections can protect temp workers.

The second thing is that Bill 161 assumes that the Employment Standards Act protects temp workers, and it does not. It actually releases employers from their basic responsibility to workers. Sybil worked in an office as a temp worker for one year. The supervisor at the office gave her a schedule, evaluated her work and supervised her performance, but we have a system that says that this client company, which controls 99% of Sybil's work, faces no liability under the law.

The Chair: One minute.

Ms. Dick: One minute; oh, no.

So there's no responsibility to temp workers whom the client company doesn't see as their employees, because the law says this is so.

Temp workers face unique problems in the overall workforce. There's a huge disparity in how employment standards officers understand temp work, as we saw. What we need is a comprehensive reform of the Employment Standards Act. Temp workers need a separate section in the act to deal with the unique work arrangement that they have. We need better enforcement. We need new and expansive definitions of "employer" and "employee" that capture that unique relationship that temp workers have. And client companies and agencies have to be jointly responsible for employees and their statutory obligations.

Alone, Bill 161 won't protect workers, because it relies on an enforcement regime that doesn't protect temp workers and it relies on the Employment Standards Act, which has proven to be ineffective in the protection of temp workers.

The Chair: Thank you very much. As part of this arrangement with Elisabeth, is she going to follow you now?

Ms. Dick: I guess that would be more appropriate. But I was actually on at 10:40.

The Chair: UNITE HERE is here. At 10:40 we'll hear from you, Elisabeth. Okay?

Interjection.

The Chair: Thank you so much.

UNITE HERE CANADA

The Chair: We'll call on UNITE HERE Canada, please. Welcome.

Ms. Alex Dagg: Good morning. Thanks for this opportunity to speak today. My name is Alex Dagg. I'm the director of the Ontario Council of UNITE HERE and co-director for UNITE HERE Canada. Our union represents thousands of garment workers, hotel workers, food service, manufacturing and distribution workers across Ontario. We have 50,000 members in Canada and about 20,000 members in Ontario.

Representing workers in traditionally low-wage service and manufacturing sectors, UNITE HERE is very aware of the growing role of temporary employment agencies in shaping the opportunities and experiences of the country's most marginalized workers. Dedicated to organizing these low-wage workers, we have noticed a disturbing growth in the number of temp worker horror stories that we hear from workers looking to improve their working lives.

As the union of record for the garment industry, we are struck by the similarities of the conditions faced by some temp workers today to the sweatshops that we first started organizing over a century ago in this province.

Contingent labour is a rapidly growing sector of the Canadian workforce and the temp agency industry is a big business. Today, one out of five new hires is a temporary worker, compared to one in 10 in just 1989. In 2003, there were 1.6 million temporary workers in Canada, up 28% from six years before. In 2004, the temp industry in Canada had revenues of \$4.4 billion, up from \$1.5 billion in the year 2000, and 60% of that revenue came from Ontario. Agency workers make an average of 40% lower wages than permanent workers, an average of \$12.06 compared to \$19.98. Fully 95% of temp agency workers were non-union in 2003.

As a union, we believe more work needs to be done by governments at all levels to address the explosion of temporary work in our economy. From an examination of employment standards to a revamping of employment insurance, many of our current labour laws and employment programs were written for a world of full-time, permanent work that is no longer available to a growing number of workers.

Our current labour legislation is also woefully inadequate in addressing the rights of these workers to union representation, which would be the most effective method of addressing these problems. Indeed, many corporations employ the use of temporary workers to provide a year-round labour supply as part of an explicit union-avoidance strategy.

The use of temporary workers overall is, however, not the issue we are here to address today, and we recognize that many temp agencies are abiding by Ontario's laws and providing jobs for people who need them.

But with the elimination of licensing of temp agencies in 2001, we have seen a marked increase in complaints of temporary agency workers who experience less than legal working conditions. The agencies that employ these workers, who we refer to as low-road operators, are most often small, start-up operations, but the businesses they contract workers to are some of North America's best-

known corporate names. These temp agencies sometimes employ practices that are either patently illegal or take advantage of loopholes to skirt labour laws.

We have heard of practices that include:

- agencies offering cash payment under the table to avoid payroll taxes;

- workers not receiving required health and safety training;

- workers being denied legally required breaks, not receiving their legally entitled overtime pay or being forced to work unacceptably long hours;

- workers never receiving payment for hours worked or their vacation pay.

Due to the pressure on the entire temporary worker industry by these low-road operators, we have witnessed industry practices that are not necessarily illegal, but take advantage of vulnerable workers. These include:

- agencies negotiating work assignments and salary, then deducting their own unrestricted fee before deducting income tax and statutory benefits;

- some agencies taking the first week's wages as a placement fee;

- client companies being required to pay a buyout fee if it wants to hire a temporary worker to be permanent, thus causing many workers to remain temporary;

- workers feeling they are not allowed to turn down a job, even if it is unsafe or they are unprepared, and workers being transported to jobs, having no idea where the work site is located or who they are really working for;

- some agencies asking workers to sign elect-to-work contracts that exempt them from public holiday or termination pay, and workers feeling obligated to sign such contracts out of fear they will not work otherwise.

As a union trying to address these modern-day sweatshop conditions, we have been struck by the lack of avenues open to these workers. While employment standards should protect these workers, many of these low-road agencies are extremely precarious operations. They start up and fold within months, which means employment standards complaints, which can take years, are rarely a useful venue to receive owed wages.

These agencies are forcing a race to the bottom for the many legitimate temporary agencies who find themselves competing against them for contracts. It is important that this legislation before you is passed so legitimate agencies—paying taxes, abiding by employment standards and providing Workplace Safety and Insurance Board coverage—are able to compete on a level playing field. Without it, the explosion of these low-road agencies will continue, as will the corresponding growth in sweatshop-like conditions.

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We feel this legislation will provide some public oversight and accountability where there is very little today. The bill's provisions obliging temporary agencies to apply for a licence yearly, prove necessary assets to establish a legitimate temporary agency and face the revocation of their licence if they violate Ontario's laws

would go a long way to improving the situation of the fly-by-night agencies that are here today and gone tomorrow.

Further work is needed to ensure there are the required resources, though, to investigate complaints and applicants for licences. As well, some mechanism must be developed that will hold the many large, wealthy corporations that use these low-road agencies accountable for the working conditions that exist in their operations, even if they themselves are not the direct employer.

Bill 161 is a good first step to build an enforcement regime that will regulate this industry and give Ontario's most vulnerable workers an avenue to lodge complaints against unscrupulous operators.

Thank you for the time to comment today.

The Chair: Thank you very much. We have about three minutes, so with the permission of the committee, I'm going to give the first round to Mr. Dhillon. You have three minutes, Mr. Dhillon.

Mr. Dhillon: Thank you, Ms. Dagg, for your presentation. You mentioned that some of Canada's biggest corporate names are the client companies. I'm a firm believer that not enough is being done to target them in terms of creating an awareness about what's happening with the temp workers. Or are they just ignoring this? What type of measures do you think can be placed on these corporate names so that they can become better corporate citizens?

Ms. Dagg: That's a good question. I think it's really the guts of the issue. I think licensing will help deal with some of the really low-road operators here that we're seeing. But the corporations that use them often use them because they don't want to take the obligation of hiring employees. They take this measure of using temporary agencies so they're not required to take any responsibility. But they are using them directly in their workplaces. They direct them day to day with what their working conditions are; they are providing whatever working conditions may exist.

I think there should be a much stronger connection attached to these employers so that if there are serious violations there could be ways to look at joint accountability with those employers. They are benefiting from using these temporary agency workers and I don't think it's okay to just say, "Oh, they're not our employees, so we're not responsible."

We've heard some very scary stories about health and safety violations in particular. There are a lot of temporary workers being used in factories today where you see dangerous working conditions. The training is not done for these temporary workers, so they're put in conditions where they don't know what kind of procedures they should be taking. The corporations should be held jointly liable if there are any issues there with Ontario's laws.

Mr. Dhillon: Any specific measures, penalties or the like?

Ms. Dagg: When we talk about joint accountability, that's really tying those employers in. If a temp agency is

violating labour law, if you could tie the employer whose workplace it is jointly liable for any violations, you could help deal with enforcement right then and there. The major corporation isn't going to want to have violations going on. They're not going to want to be tied to that, so make them recognize that they have a direct relationship here and that they should be accountable for the temporary workers on their premises as well as the agency employer.

The Chair: Thank you very much.

We'll move to the Staffing Edge.

Interjection.

PARKDALE COMMUNITY LEGAL SERVICES

The Chair: We'll then hear from the Elisabeth Bruckmann in this slot. Welcome.

Ms. Elisabeth Bruckmann: I've also got a handout.

The Chair: You don't want to spend your precious time handing things out, nor do we want to see you spend your precious time. We want to hear from you.

Ms. Bruckmann: I'm Elisabeth Bruckmann. I am a staff lawyer at the Parkdale community legal clinic. I specialize in workers' rights and human rights. We represent an enormous number of workers every year who come forward, who have worked through temp agencies and who have had their rights, under the Employment Standards Act in particular, violated.

We've already heard from Karen Dick from the Workers' Action Centre and from Ms. Dagg from UNITE. I think they both did a very excellent job in outlining the kinds of abuses that these workers experience in the workplace. They spoke, to a certain extent, to the fact that these workers are being abused in part because they are already marginalized people. They are people of colour, they're women, they're new immigrants. They're desperate for work and the temp agency offers them jobs, which they can't find anywhere else. They're also experiencing abuse because our current legislation does not conceive of the kind of relationship that's created in a temp agency. The notion that you are in a workplace, but the person giving you instructions and telling you what to do, where to go, when to start and when to stop is not your employer. Your employer is an entirely different person, who you don't interact with on a day-to-day basis.

The current legislation and the current scheme that we have do not adequately address this. What has been put forward in Bill 161 is, in our view, a tremendous first step. In the first place, it recognizes the problem. I have to say that I'm surprised it's taken so long, because this industry is exploding. As was described by the earlier presenters, hiring temp agencies is extremely attractive to employers. It allows them to avoid obligations and responsibilities as employers, and the temp agencies stand to make an enormous amount of money. The industry is exploding. This bill is a crucial first step in recog-

nizing the problem and we're very thankful for that. However, it's just a first step, and a small first step.

What I've outlined is a document that I prepared which is a clause-by-clause review. I don't have time to go through it, but one thing that comes up consistently in this document is that in order for this licensing scheme to work, it has to be part of comprehensive reform. We have to look at our other labour legislation and make sure that it takes into account the realities of a temp worker's way of working, way of interacting with employers and the way that responsibilities are different in a temp work situation. We have also got to look at the other legislation and work out if we are actually enforcing it or not.

Having said that, I do have a few points about the licensing scheme. First of all, I think it's crucial that the definition of "employment agency" be expanded. As the earlier presenters noted, there is a proliferation of different forms of employers coming out of the woodwork, not only temp agencies and staff agencies, but people who allege that they are setting up franchises. They're offering new immigrants an opportunity to have their own business and, for thousands of dollars, they can have their own cleaning contracts. However, when you look at those workers, everything they're doing looks like employment. The definition of employment agency has to be expanded to ensure that all of these schemes are captured.

There also needs to be a clearer sense of what qualifications are going to be necessary for a licence. At the moment, a lot of this has been relegated to the regulations. We need to know what somebody has to show in order to get a licence. If we're concerned about their past history, where are we going to find that history? Is the Ministry of Labour in a position to tell us whether this person has been violating the act or not? There is a lack of specificity in the qualifications. There is also a notion of financial responsibility, which is also unclear. Considering some of the, frankly, shady operators out there, we need to be clear as to what body will be obtaining this licence. Is it a corporation? Is it an individual? We need to capture the various corporate forms that are created to allow people to slide in under the radar.

1030

Very briefly, to move on, there also needs to be a clear indication of what will bring about a suspension or a revocation of a licence. It's not clear. It should be clear and it should be mandatory. Violations of the ESA or other labour laws should result in a revocation.

There are, then, extensive provisions for employers to appeal. Apparently, they can go directly to Superior Court, which is extraordinary in light of the existence of the OLRB as a specialized tribunal. However, workers are not listed as parties. That's got to change. Workers have to be able to stand up for themselves and play a role in making sure that they have a fair workplace.

Finally, I would make a final note with respect to the title of the act. The title of the act at the moment is Protecting Vulnerable Workers Act. It's a laudable goal, but this act does not protect vulnerable workers. This act

is a valuable first step towards recognizing the problem of vulnerable workers in the exploding temp agency industry, and it's an important piece of a larger body of reform. We are very thankful that this act has been brought forward. We would like to see the next steps. We would like to see the ESA reformed to address temp workers and precarious workers, and we would like to see more resources directed to the Ministry of Labour, with a mandate to go out and enforce those laws so that all Ontarians, regardless of their origin, their gender, their racial background, have an equal entitlement to a fair and just workplace which operates within the confines of the law.

The Chair: Thank you. There's about a minute and a half left.

Mr. Norm Miller (Parry Sound–Muskoka): Thank you for your presentation this morning. I wanted to quickly address two things. First of all, will this bill shut down the fly-by-night operations that were talked about by you and your partner? Secondly, the self-employed situation—I had a situation that I just learned about at tax time. My daughter, in her summer job this year, was working for a very reputable marketing company. Only as we were filing our tax in the last month did I discover that they didn't take any deductions. They basically treated her as a self-employed individual, and they also barely paid, or didn't pay, her minimum wage. This wasn't a temp agency. This was a downtown Toronto marketing company on King Street. So in her case, and it's probably the case with the immigrant workers and people who are at their first job, it just isn't worth the bother to use the existing laws. I mean, she's at school and there's a process and cost involved in trying to right the situation. There's no way she should be treated as a self-employed individual.

I guess the first question is, will it shut down the fly-by-night operations? Then, also this other self-employed situation, if you just want to—

The Chair: The question is longer than the answer; you've only got about 40 seconds.

Ms. Bruckmann: Okay. Well, I'll address the second one first. The question of calling a person self-employed when they are unquestionably an employee is a new and ever-growing way of trying to avoid the obligations under the ESA. It happens out there in all sorts of settings. I've seen waitresses told they are self-employed. However, there is a particular form of it which bears close resemblance to temp agency and placement agency work. That's why this definition of employment agencies needs to be expanded. That is the way to catch that type of problem. I think what your daughter experienced isn't necessarily the same. What the people we're working with are experiencing is an actual scheme to try and pull them in, offering them work in various different places, but they've got to pay for that work because it's their own business.

The second question: Is this going to stop the fly-by-night operations? It could. The act needs work. The definitions need to be clearer, the qualifications for

licences need to be clearer and, above all, there's got to be enough resources for the Ministry of Labour to go out and enforce it.

The Chair: Thank you very much.

THE STAFFING EDGE

The Chair: Is the Staffing Edge here, please? How this works, sir, is you introduce yourself and you have 10 minutes.

Mr. Victor Winney: My name is Victor Winney. I'm the chief financial officer for The Staffing Edge. A little backgrounder on who The Staffing Edge is: We were established in 1995 to support and help entrepreneurs, staffing agencies, grow in the Canadian market. We provide the financing, we provide the technology, we provide the risk management and we are the employer of record for all temporary associates out to work. We currently represent 58 staffing companies in the province of Ontario today.

Our members are some of the most predominant people in the community. We have members who have hit Canada's top 100 women entrepreneurs list, Canada's hottest upcoming Canadian companies and Canada's fastest-growing companies.

We ran approximately 39,000 T4s in the province of Ontario last year and we represent 3,000 work sites. We currently have a 10% market share of the temporary staffing market.

Some of the challenges that we see with this bill: It doesn't give a clear definition as to what type of business will or will not qualify for a licence or, for that matter, what type of business is regulated.

Bill 161 is targeting staffing firms rather than targeting all employers, as vulnerable workers exist in every industry. Bill 161 will only create additional burdens for staffing firms that already adhere to the Ministry of Labour and workers' comp legislation and regulations. Thus the agencies that do not obey these rules today will not be the ones to go out to obtain licences tomorrow.

The regulation of fees charged to clients and pricing are directly in conflict with the free market. This regulation would have to extend to accounting firms, law firms and other service providers that have differences in their bill and pay rates, as these companies are staffing agencies in disguise.

Part of what we see as a recommendation for this: utilizing the increased number of auditors and inspectors to focus on employers who are circumventing the regulations and legislation currently in place; creating a hot-tip reporting system and following up processes to ensure employers currently operating inappropriately are investigated; being that current legislation has teeth, if directed, the officers can target all parties involved—in other words, staffing firms and their clients that are not compliant.

We strongly recommend staffing firms be involved in the creation of punitive penalties for both staffing firms and end-user companies that knowingly use their ser-

vices. We believe publicly posting these offences will quickly regulate particularly large corporations—companies that currently have no penalties or consequences for using such firms and actually gain more profit as a direct result of using these non-compliant staffing companies. Thank you.

1040

The Chair: We have about four minutes.

Ms. Cheri DiNovo (Parkdale–High Park): Thank you for coming before this committee and deputing. I have a question. In 2001, there was a licensing arrangement with temporary agencies, so you must have experienced that period as well in your business. I'm just wondering if you could comment on the period when there was licensing versus the period when there is not.

Mr. Winney: The licensing at the time was more toward permanent placement, not temporary. Temporary is a different breed than permanent placement. The licensing was not one that targeted anything; it did not restrict anybody from operating. All it was was a piece of paper on your wall. No one actually went and audited or did anything to stop the people from doing it.

The problem with licensing in our industry—the people who are breaking the rules and breaking the laws will not go out and get a license. These people are operating under the table. They're paying cash. They're doing everything against the legislation currently on the books. So will they go out and get a licence? Highly unlikely. It's always the ones who operate legitimate businesses who will get that licence.

Ms. DiNovo: I have to say, I used to be an owner-operator of an agency, so I'm very familiar with the industry. I was in it for many years and I know whereof I speak. This bill really is just asking for a piece of paper on the wall as well, it seems to me, and doesn't have any enforcement built into the law, so that's why I'm asking you. There has been a similar deputation here about lack of enforcement. This doesn't seem to be that much different. So I'm wondering if you could comment on the differences in this recommendation, because in my day we did have to get a licence—temporary or permanent—and this bill seems to simply reinstate that pre-2001 situation.

Mr. Winney: If you want to really target vulnerable workers in this industry, you have to target the people who are benefiting from it. The people who are benefiting from it are the end users. When they can pay a bill rate of \$10, and minimum wage is at \$8, and you have government burden costs that make it impossible to pay that \$10, those people are taking advantage of the workers just as much as a temp agency. Unless you stop end users or fine end users for taking that advantage, this problem is going to exist forever and a day.

Ms. DiNovo: So how would you recommend getting at these large corporations that are the end users benefiting from this structure?

Mr. Winney: It's back to the plain and simple. If they receive punitive damages, if they get fined for what they do, that's going to change things. If they start getting

fined, it's like workers' comp. If they have an accident, they will pay attention to the safety of their employees. If they get caught for having \$10 wage earners on the floor, then they're going to change their attitudes. And publicizing that is key.

The Chair: Thank you very much.

GARDIEN HEALTH CARE STAFFING

The Chair: We'll call on the Gardien Health Care Staffing group, please. Welcome.

Ms. Rose Anne Holness: My name is Rose Anne Holness and I'm the CEO of Gardien Health Care Staffing. I've been supplying nurses to health care facilities in the GTA for the past 28 years.

The intentions of Bill 161 are admirable. However, it does not achieve its objectives and I believe is singular in its focus.

Points that I believe are essential in preparing a bill are the following:

Legislation that is created must be fair and equitable. It must protect and respect all the stakeholders: the worker, the employment and temporary staffing agencies and the client.

Agencies do not create a need for their services but they respond to a need created by the workplace.

While there are many poor agencies, there are many good agencies and they provide valuable services to their workers, their clients and their communities.

All persons seeking employment are vulnerable, from the highly skilled IT professional to the seasonal worker.

All legislation must be harmonized with all federal laws defining and pertaining to the employment of workers.

In the allotted time, I would like to address the proposed legislation by the following: vulnerable workers; employment agencies and temporary help agencies; and clause 16(g).

The proposed legislation is entitled the Protecting Vulnerable Workers Act (Employment Agencies), but nowhere in the bill is a vulnerable worker defined. By defining it as the vulnerable workers act, it is placed in the social arena; by defining it as an employment agencies act, it becomes an employment issue. By having an employment agencies act, I believe more protection can be provided to all stakeholders, including the vulnerable worker.

Section 6 of the proposed legislation states that the supervisor can refuse to issue a licence "where the applicant is a corporation." Incorporation provides certain benefits, such as limited liability and the ability to raise funds. A corporation is a person in the eyes of the law. A legal person is an entity recognized by the legal system as having rights, duties and responsibilities under that system. By making this a limiting factor to licensing, the rights of agencies are infringed upon and their ability to protect their investments is limited and therefore prohibits them from extending protection to the worker and their clients. There is a moral obligation on lawmakers to protect all citizens.

Furthermore, the legislation is confused as to whether or not a corporation can be an employment agency. I am in favour of licensing employment agencies. Through licensing, I believe all stakeholders can be protected.

I propose that before licensing, all prospective applicants seek rulings from Revenue Canada as to their status. Revenue Canada is the agency that determines if they are employment agencies, temporary help agencies or self-employed contractors. The ruling would have to be presented with their application. Therefore, the licence would also require them to: be incorporated; have a GST and payroll remittance number; have a WSIB certificate; have an EHT account number; obtain liability insurance; and be bonded. I believe this would be a win-win situation for all. It would protect the workers, their rights and benefits. It would protect the client and the agency. If they were all deemed to be employers, they would be unable to charge a fee for the services to the employee. I also believe that not-for-profit employment agencies must adhere to the same standards as for-profit employment agencies.

Temporary help agencies: The proposed legislation refers to temporary help agencies in section 1 but fails to define a temporary help agency. In defining a temporary help agency, it is important to understand the role of the Canada Revenue Agency in determining who is an employer and who is an employee. I have included in your packages the Canada Revenue Agency guidelines for this determination. Once it is determined that temporary help agencies are employers, the Employment Standards Act protects the worker.

The Employment Standards Act, however, should be strengthened to protect the worker by reinstating sections which were removed, I believe, in 2000-01. Temporary workers must be protected from being paid less than client staff performing the same or similar work in the same workplace. Clients often adopt the lowest price policy, resulting in remuneration being forced downward.

In my particular industry, our clients believe that they have the ability to set our margins, and many of them believe about one dollar an hour is what we deserve for overhead and profit. However, statutory payments for vacation pay, CPP, EI, WSIB and EHT amount to 20% of the hourly wage, so agencies are forced to find—

The Chair: There are about two minutes left.

Ms. Holness: Okay—are forced to find ways to offset these employment costs by having their staff become self-employed contractors.

Over and over again I have been approached by staff wanting to be self-employed. Recently, one staff member insisted that he be self-employed so that he could have a line of credit. What he really wanted to do was to be self-employed so he could go to the bank, open up a business account and get a line of credit so he could purchase a home. So we find that people come to us requesting to be self-employed.

1050

Once again, strengthen the Employment Standards Act by expanding section 10 to include businesses where

there is a bargaining group and make it illegal to outsource to a business paying below the established rate.

Agencies are part of the marketplace. The marketplace should operate without restriction from the government, and agencies should be able to set their own prices reflecting the needs of their clients, wages, overhead and profit.

There are many concerns that could be addressed, time permitting. This is a very important and complex issue. The input of the employment agencies and temporary staffing providers and their associations is essential for the success of this bill.

I want to see a bill that is fair and equitable and protects and respects all stakeholders: the employment and temporary staffing agencies, the client and the worker. I would like to see this be a win-win situation for all. Thank you.

The Chair: Thank you very much. All the time has been expended.

ASSOCIATION OF CANADIAN SEARCH, EMPLOYMENT AND STAFFING SERVICES

The Chair: We'll move to ACSESS, the Association of Canadian Search, Employment and Staffing Services, please. Welcome.

Ms. Amanda Curtis: Good morning. My name is Amanda Curtis. I am the executive director of, as you said, the Association of Canadian Search, Employment and Staffing Services, which is far more easily known as ACSESS.

Our organization was formed in 1998, but it goes back to the early 1960s when it represented two different sub-sectors of our industry. Much of this is actually being drawn attention to by this bill today. ACSESS currently represents in excess of 80% of industry services provided by legitimate companies across Canada.

As a single voice for all sectors of the employment and staffing industry, ACSESS has a long and very positive working relationship with the Ontario Ministry of Labour. Our key objectives include a responsibility to assume a leadership role in industry licensing and regulation and to promote best business practices and adherence to all applicable employment legislation and regulations.

Like the speakers before us, we don't condone poor treatment of workers, and we take these responsibilities very seriously. The ACSESS code of ethics and standards was also written to represent the interests of several audiences: not just the member company but their candidates, the individuals seeking full-time employment; their employees, the temporary workers; and their clients. Our members pledge to uphold this code of ethics on an annual basis. They receive a certificate to post on the wall, so there is something that people can look for.

We also have a strong safety group that we run in cooperation with the WSIB.

I would like to stress at the beginning that ACSESS does support meaningful and effective regulation and the

sponsoring member's goal to protect the vulnerable workforce. We agree that this bill has drawn attention to many of the concerns that have been raised.

Our discussion paper, however, explains why we believe the proposed act would not achieve this goal. The bill does lay out a framework for potential licensing of permanent placement agencies—and this was referred to briefly before—but it does nothing to address any gaps or potential improvements that could be put into the Employment Standards Act.

If we look at the history of licensing, the Employment Agencies Act that was in place in the past addressed only the full-time, permanent placement agencies that provide a service as a middle party between the employer and the candidate. It did not apply to the temporary staffing firms. Those are the ones which, as we said earlier, have their own employees. They fulfill the role of employer and they send them out to their clients' place of business. In fact, in 1998 and 1999, ACSESS met several times with the Ministry of Labour to address ways in which the then Employment Agencies Act system could be improved. It was a piece of paper that was put on people's walls, there was no compliance requested, and it was really meaningless. This, of course, ceased when the act was repealed by government in 2001.

As I've mentioned, the temporary staffing firms are the employer of record. They are subject to and must abide by all applicable employment and human rights legislation. They are covered under existing statutes and regulations, and they will continue to be covered under any improved legislation. The whole gamut of legislation that our member firms have to comply with ranges from human rights acts to health and safety, privacy legislation, employment standards, the Ontario Labour Relations Act and all the payroll-related responsibilities that come under the Canada pension plan, employers' health tax, employment insurance and the Canada Revenue Agency.

It's very important that we all understand the difference between the permanent-placement agencies and the temporary staffing firms, because if we don't, we run the risk, as an industry association, to appear divided. Many of our employment agencies support the concept of meaningful licensing on the part of our temporary staffing members; however, we must support enforcement of current legislation and finding solutions or improvements if gaps exist.

I would like to speak briefly to the shortcomings of Bill 161 as we see them. Number one: Essentially it is a duplication of the previous Employment Agencies Act and it fails to address the issues or to offer any protection to vulnerable workers.

The licensing criteria are vague. The bill does not offer any guidance or definitions which accurately describe the types of businesses it intends to regulate. It also does not describe what types of businesses will not qualify for a license.

It's extremely important to note that when we talk about protection of vulnerable workers and adherence

and enforcement of existing statutes, this applies to all employers—any company that is offering part-time or seasonal work arrangements—not just the staffing services industry. Reference was made earlier to an individual working for a marketing firm.

We believe there's also ambiguity on the subject of agency qualifications in the bill as it's put forward. We have addressed it in our discussion paper, but no attempt has been made to determine what might constitute reasonable grounds to withhold a licence or how violations would be addressed and penalties issued.

Bill 161 speaks about the regulation of fees charged to clients and pricing. We have addressed price control. We believe this would be counter-productive in all ways and would not serve the interests of business or any of the parties involved.

In general, the bill lacks clarity and, because of this, it also lacks teeth. It doesn't do what it was originally intended to do. Companies that are in contravention of employment standards will continue to operate the way they are today, and they will simply slip under the radar screen.

At the conclusion of our paper, we list eight recommendations. I refer to the written submission that was tabled and I urge those of you in the room to closely review the details of the points put forward.

Today, in the interest of time, I would like to read the last two recommendations. The first one addresses awareness, outreach and education. We recommend that a review be made of existing communication and educational materials and that this be available to all employers and all employees. ACSESS would support and assist the Ministry of Labour in educating industry employers and employees. Government and industry need to work together to ensure that all workers in Ontario understand their rights and feel that they can come forward.

The second refers to consultation. We would like to participate and have ACSESS engaged as a willing and capable partner in an effort to create a better understanding of the issues that have been raised. We would like to develop solutions—these may include licensing—communicate with stakeholders, develop and implement training tools and, finally, promote public policy and industry objectives.

We've heard concerns on many employment issues and we've heard them reiterated here today. People constantly talk about charging fees to candidates. I can't stress enough that we have always been opposed to this, as an industry and as an association. It is covered in point 8 of our code of ethics. And we don't condone any charging of fees to individuals seeking employment. We believe this should fall under the Employment Standards Act, it should apply to all employers and it should be enforced.

I heard Mr. Dhillon's horror stories earlier and I believe these also need to be addressed.

In conclusion, for the temporary staffing side of our industry, ACSESS supports rigorous enforcement of

current legislation, as well as continuation of employment standards branch safety initiatives that were ramped up a little earlier this year, including more auditors and inspectors who would focus on employers and bring attention to and fine those who are in breach of legislation.

ACSESS supports finding solutions if there are gaps in the Employment Standards Act and if reforms are needed. ACSESS would like to see improved communication, as I said earlier, with all employers and all employees.

For the permanent placement side of our industry, we certainly are in favour of self-regulation and we don't rule out, by any means, the question of licensing, providing that it's carefully created and meaningful and more than just a piece of paper.

We urge the sponsoring member to suspend the efforts on this bill as it stands right now, and we would welcome the opportunity to be part of consultation with our industry and other interested parties and stakeholders.

I thank you for the opportunity to present today.

1100

The Chair: Thank you. Mr. Dhillon, if you can use one minute, then you're welcome to it.

Mr. Dhillon: I have no questions. I just want to thank Ms. Curtis for taking the time for that very insightful presentation. Thank you very much.

Ms. Curtis: Thank you.

The Chair: Thank you.

MOHAMMAD JAMAATI

The Chair: We'll go to Mohammad Jamaati. Welcome. Could you introduce yourself to us, and then you have 10 minutes.

Mr. Mohammad Jamaati: I want to go straight to Bill 161 instead of talking generally. Everybody knows that there are bad guys and good guys out there, but what I want to talk about is the bill itself.

I believe the title of this act should be "employment agencies licensing act." Why? Because in section 1 there is the definition of "licence," "prescribed" and "regulations," but "vulnerable workers" is missing, and from sections 1 to 14, which is about 80% of the act, there is no mention of vulnerable workers. There is one mention in section 11 of "the interests of persons dealing with the agency." Yes, vulnerable workers are part of that, but it could be employers, it could be the landlord of the agency, even postmen.

So the second reason is the whole bill is dealing with licensing: issuing, renewal, refusal, suspension, revocation, court appeal and so on. The second reason is the Lieutenant Governor in section 16 "may make regulations." Those regulations that I like are (a), (e) and (i). You're lawyers, and you know the law has two parts: one is the word of the law and the other is the spirit of the law.

This act, as its name implies in section 18, is protecting vulnerable workers. This is the spirit of the law,

which is totally missing in the whole act. Maybe they argue that, yes, there are some bad agencies out there, like unleashed predators, and we should put a leash on them because they look at vulnerable workers as prey. So if there is licensing, that would be good, but we know that Canada has a capitalist system. It's not socialism. Maybe Mr. Dhillon argues that we can't have a harsh act against agencies because it's a capitalist system. France has a capitalist system too, but they have good labour laws. Those labour laws, they argue, caused the economy in France to slow down. I know what's going on behind the scenes, but if we say something, we should do that and not say something and do something else.

Another point I want to make is about supervisors. Why should we have an act that gives so much power to the supervisor? In section 11, it is mentioned that supervisors can refuse renewal of or revoke the licence because of "the interests of persons dealing with the agency or to the public interest." I don't like "public interest," the term itself, because this is a very general thing. There is the possibility for misuse or abuse of this general term.

In 1998, when I came to Canada as a landed immigrant, I had a master's degree in electrical engineering. I want to give you an example. Now I have to get a P.Eng., professional engineering. They told me, "You have to go through a long process, several years, to get your rubber stamp." I know that there is no need to go through such a thing. They want to put a brick wall in front of people who want to get licensed. We need to change this mentality. A licence is not a brick wall, not a barrier; a licence should be a small wall, but there should be monitoring and scrutiny when you are working.

What I'd like is if we put more sections in the bill that deal with inspections, not just issuing licences and these sorts of things.

Again, in clause 6(a), it mentions "in accordance with law and with honesty and integrity." There are two generalizations. Law: Which law is mentioned? Honesty and integrity: The supervisor can misuse these general terms, and it's very easy for them to do it. After all, the supervisor in this bill is not accountable at all. Yes, they say that agencies can go to court and make a complaint, but who guarantees that—you know the judge looks at the law and sees that the supervisor can do anything they want, so the judge cannot do anything. That's it.

The Chair: That's it? Thank you, sir. Okay, we have about a minute and a half.

Mr. Ted Arnott (Waterloo-Wellington): Thank you very much, Mr. Jamaati. On behalf of the official opposition, I want to thank you for making your presentation today. I think your views are ones we ought to consider, and we really do appreciate your taking the time to collect your thoughts and bring them in here.

Would you say that, in your opinion, this bill should pass into law as it is currently structured?

Mr. Jamaati: The problem is, why should this bill be so short? It has just 18 sections. You could put in a dozen more sections related to—I'm talking about clauses

16(a), (e) and (i). There should be more explanation and more sections about—why did you leave it to the Lieutenant Governor? Forgive me, but everybody knows that the Lieutenant Governor is just a rubber stamp. The supervisor will make proposals, and the Lieutenant Governor will just sign it. You should take clauses 16(a), (e) and (i) and put them in—this act can have 40, 45 or 50 sections. Why not? Why should it be so short? It's just dealing with the licensing.

The Chair: Thank you very much. We appreciate it.

Mr. Jamaati: And my final words? Can I say my final words?

The Chair: You have 30 seconds. Go ahead.

Mr. Jamaati: On CNN, there is a program called Wolf Blitzer, the Situation Room. That's soft talking. But on the BBC, there is a program called HARDtalk with Stephen Sackur. I like the second one with Stephen Sackur. Forgive me, but my final word is: This bill is a joke, and I'm totally disappointed.

The Chair: Thanks.

1110

JOSEPH BENJAMIN

The Chair: Joseph Benjamin, please. Welcome, Mr. Benjamin. You have 10 minutes to make your presentation. If there is any time left, we'll go to Ms. DiNovo.

Mr. Joseph Benjamin: Hello. My name is Joseph Benjamin, and I am an organizer with UNITE HERE.

As a union organizer, I spend my time talking to workers about their problems and helping them improve their working conditions. Over the past several years, I have seen a rise in the number of workers talking about problems with irresponsible temp agencies that keep them in constant limbo and don't treat them fairly.

Our union decided it was important to understand these practices first-hand in order to advocate for these workers. I went undercover to apply at several agencies, and my experience confirmed that some agencies fail to respect workers' rights and their own legal obligations.

When I applied to Unique Staffing, they placed me in a printing company called PLM. I worked there on November 12, 2006. Some of the products they print at this company are the boxes for the Telus telephone company, the boxes for Molson beer company and some coupon booklets.

There's an application that you fill out before you are placed anywhere. It's your name and address. I was called in to work the next day. They took us to the printing press and walked us into the lunchroom. The supervisor or manager then took us onto the floor and told us what to do.

Then he left. It was up to the other agency workers who had been working with this agency for a while to work with us and show us how to do the work. We then worked a 10-hour shift. The agency moves people around to different work sites throughout the week. After working for two days, I was called to work somewhere else.

I felt that Unique Staffing seemed to be a very shady agency. I was never asked to provide my social insurance number, references, proof of name or any other identification. The workers have the option of being paid in cash or by cheque. The wages for working with this agency are \$7.50 per hour if you choose cash—which was below the legally required minimum wage of the time—or \$8.25 per hour if paid by cheque.

There's no sign-in sheet at the agency or at the printing company. It seemed as if there was no record of us working for the agency. Your name is written on a piece of paper before you leave the agency, and you are transported to the work site in the agency's van without knowing the location you are going to. The list of names is then handed to the manager at the work site, who then calls out our names and takes us out to work. After work, the van would come back, pick us up and take us back.

At another agency, they paid people on a two-week cycle and asked us to sign a document agreeing to be paid for overtime only after 60 hours. When I asked questions about the forms they were asking me to sign, I was told I could consult an outside adviser if I wanted before signing, but they wouldn't allow me to take the form away with me to get the advice. The form included agreeing to submit to a credit check. To this day, I can't understand how my personal credit rating would be relevant to working with any temp agency.

The way I understood it, it seemed like they grouped several things together on that form—health and safety, overtime and a couple of other policies. Parts of the forms were questionable, to say the least, but in order to work there you have to sign off. People I worked with felt that if they didn't sign the form, they simply wouldn't have a job. For precarious workers like the many I met, they have little choice in the matter and are afraid to speak up or ask questions.

After experiencing first-hand what agency workers face every day—not knowing who their employer really is, where they will work, whether they have any protection or if they are being paid for all their work—I believe that a bill like this one is very important to bring irresponsible employment agencies into the light. The government should not abandon workers when they work outside the permanent labour force. I believe Bill 161 is a good step in the right direction to protect workers in the new precarious economy. Thank you.

The Vice-Chair (Mr. Mario G. Racco): Thank you, Mr. Benjamin. We have about two minutes left. Ms. DiNovo, two minutes.

Ms. DiNovo: Mr. Benjamin, thank you for your testimony. Thank you for the work of UNITE HERE. You do phenomenal work organizing, and thank you for your personal bravery with what you encountered.

The questions that you've heard raised around the table and with the other deputants were not that we are not interested in helping vulnerable workers, but is this bill the best way to do it, and the possibilities of enforcing this bill. Clearly, the agency you signed up with broke about every Employment Standards Act

legislation piece that I can imagine and should probably have been reported to the police, among other things. Just wondering if you did actually follow through and report what you found with that agency to the employment standards authorities and what response you received.

Mr. Benjamin: At the time when I went to do this, workers were telling us that they were facing these problems, so we went to see if it was true what they were saying, if it was really bad like they were saying. After discovering for myself, we don't have the power to deal with these temp agencies, so we think the government should intervene and bring these temp agencies—we bring them to the light and we think the government should do what is necessary to have these temp agencies obey the law and treat these workers with the rights they require and deserve.

Ms. DiNovo: Absolutely; I totally agree. I think we do agree on that around this table. Particularly this kind of agency is what we're trying to address. Forcing them to get a licence: First of all, they probably wouldn't comply anyway, and even if they did, it would be a piece of paper on the wall. So the question is, how do you enforce the Employment Standards Act, even as it stands? It seems to me that it's not being enforced anywhere, so that is the question. That was my question, really: In this particular instance, did your union go ahead and try to complain about this agency, and what happened there? That would be an interesting story because I think that's where the hub of the problem is.

The Vice-Chair: Thank you, Ms. DiNovo. Thank you very much, Mr. Benjamin.

AHMED ILMI

The Vice-Chair: The next deputation is from Ahmed Ilmi. Sir, you have 10 minutes total. You can use the full amount to make your presentation, or if you leave some time, there will be questions asked, or comments. You can start.

Mr. Ahmed Ilmi: Hello. My name is Ahmed Ilmi. I'm testifying in support of Bill 161 because I think it will help protect workers who are not informed about their rights at work and it will ensure that temporary work doesn't mean dangerous work.

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I have been employed through a temp agency while I was a student for the past several years. They gave me numerous temporary jobs—many of them at plastics plants—that I accepted to support myself during my studies. When I needed work, I would call into the temporary agency office. They would give me an assignment, the start and finish dates, rate of pay, the location and a supervisor's name to report to once I got to the job site.

Once at the warehouse, I would be told to go to work at a plastics manufacturing station. Another worker would come over, show me how to operate the station once, or maybe twice if I was lucky. After that I would be left alone to operate the machines. The training was simply about operating the machines, not about my safety as a worker. Some of these machines are quite complex.

No one came around to check up on me unless something was going terribly wrong. In those cases, the indicator light on the station would go off. Then someone would come over, stop the machine, fix the problem, and then leave. I would not receive further training as to what I did wrong or warnings about what to do if something went wrong.

There were no regularly scheduled breaks or designated lunch break times in which I was alleviated of my duties to take my lunch breaks or rest breaks. I would often ask other workers when I could take my breaks, because supervisors would never be around so that I could ask them about my breaks. No supervisor explained that I had the right to a break, when to get it or explained what it was. In fact, there were no designated times when workers from temporary agencies would be relieved to take their breaks. The manufacturing stations would never stop, so workers were expected to work non-stop. I was always tired at the end of the day.

I was also never informed about health and safety protections or WSIB coverage or given training to protect me while working at these machines. Indeed, I was never given instructions on how to operate the equipment that I was expected to handle at work, which left me vulnerable to injury. These are complicated machines that move quickly and need to be handled carefully. I was also never given any safety equipment such as gloves, safety boots or earplugs. I was never told how to handle chemicals or materials that I was exposed to at these plants. I was not given WHMIS materials or information, and moreover, I was never properly trained in what to do in case I was ever injured.

Adequate government regulations are needed to force agencies to provide workers with a workers' bill of rights that should include health and safety rules and regulations, because many of these workers who access these agencies do not know their rights. While I knew something about my rights and would take the risk of speaking up—asking for my breaks and such—many older workers had families to support and were too scared to speak out. They felt there was no one who could help them and felt that they could not speak up for fear of not having the jobs they needed to support their families.

I strongly believe that requiring temporary employment agencies to be licensed would protect workers' rights, because oversight would discourage the bad conditions workers often face. As it stands, these workers have no rights. As it stands, these workers do not have any protection and often work in unsafe environments without the necessary protective equipment. Thank you.

The Vice-Chair: Thank you for your presentation. Are there any comments?

Mr. Dhillon: Thank you, Ahmed, for your presentation. Did you make any complaints to the Ministry of Labour about these conditions?

Mr. Ilmi: I was actually a student and this was just a part-time thing. I would just be sent to different places and never really bothered with them.

Mr. Dhillon: With respect to other workers, were they recent immigrants?

Mr. Ilmi: Yes, there were many recent immigrants who basically never spoke English and that sort of thing. And even if they spoke English, they would not know what the labour regulations are.

Mr. Dhillon: Would you think if the ministry had some awareness programs in other languages and a tip line in different languages, that would make it easier for workers to complain?

Mr. Ilmi: Maybe, but it's essential to regulate these agencies so they don't get away with doing whatever they want.

Mr. Dhillon: Thank you very much.

The Vice-Chair: Thank you very much for your presentation.

OLIVIA ROCK

The Chair: The next presentation is from Olivia Rock. Would you please have a seat?

Ms. Olivia Rock: Good morning. I am honoured to represent—

The Vice-Chair: Madam, you must have a seat so we can all hear you. You may start. You have 10 minutes total.

Ms. Rock: I come here to represent being a woman and being a human. There are lots of experiences that I see that are harassing and abusing. I understand that this bill is good to pass this bill, because my own people come here and they can have their own job.

I want to know, because where I live now, 10 Willowridge, 32 years I am—we have a meeting on Friday. I organized a meeting for the tenants' organization.

This opportunity that I have here to meet you is my honour. You understand that I am here to support the bill. I'm glad. I'm very happy that I'm here with you, sir, and everybody, as a woman.

I'm here because I want to have an opportunity to have rights for landlords and tenants. They are harassing tenants too. They don't hire the right person, and they don't respect people. That's why I arranged the meeting on Friday at 7 o'clock. So I hope you understand why I'm here.

I support all we have, but I don't want to hurt people, as a human. That's why I'm here. I've already been lots of places. I was in England for nearly five years. I represent my own people, 680 Filipinos with low income. I've been protecting them.

I've very happy that you invited me here, being a woman and a human. And everybody understand, if it is hard for you, don't do it—follow the rules and regulations in law. If you don't follow them, I'm proving that you are no good, but you must be good. If it is bad, don't do it. That's why I am here, to remind you that people must understand that if it is bad, don't do it.

When I came here in 1975, Toronto was very clean, number one. Okay?

The Vice-Chair: Thank you, Madam. Is that all you want to say?

Ms. Rock: Yes.

The Vice-Chair: Mr. Arnott, you have an opportunity to ask some questions.

Mr. Arnott: I just want to thank you very much for coming in to this committee today to offer your opinion on this important piece of legislation. Your input has been very valuable to all of us.

Ms. Rock: And very important too because we have a meeting on Friday. So I hope you pray for us, that we're going to have our rights—for the harassment and abuse. But I support this bill 100%.

The Vice-Chair: Thank you again. Thank you to all. This is the last presentation. The meeting will be adjourned. Before we do that, though, a reminder that this committee is meeting again from 4 to 6, but in committee room 1, not here. We are dealing with Bill 164, and it's going to be clause-by-clause.

Thank you again. See you at 4.

The committee recessed from 1129 to 1602 and resumed in committee room 1.

COMMUNITY RIGHT TO KNOW ACT
(DISCLOSURE OF TOXINS
AND POLLUTANTS), 2007

LOI DE 2007 SUR LE DROIT DU PUBLIC
D'ÊTRE INFORMÉ (DIVULGATION DES
TOXINES ET DES POLLUANTS)

Consideration of Bill 164, An Act to amend the Consumer Protection Act, 2002, the Environmental Protection Act and the Occupational Health and Safety Act / Projet de loi 164, Loi modifiant la Loi de 2002 sur la protection du consommateur, la Loi sur la protection de l'environnement et la Loi sur la santé et la sécurité au travail

The Chair: I call the committee to order. We're on Bill 164, An Act to amend the Consumer Protection Act, 2002, the Environmental Protection Act and the Occupational Health and Safety Act, MPP Tabuns.

Are there any comments, questions or amendments to any section of the bill, and if so, to which section? This question is asked at the start of each section.

Ms. Laurie Scott (Haliburton–Victoria–Brock): I move that subsection 13.1(1) of the Consumer Protection Act, 2002, as set out in section 1 of the bill, be struck out and the following substituted:

“Exposure to toxic substances

“(1) No prescribed supplier shall supply to a consumer goods or services that expose the consumer to a toxic substance described in subsection (2) unless the supplier first makes detailed plans on how it could reduce its use of the toxic substance and submits the plans to the minister.”

We think that issues such as the one proposed by this provision, for example, in the labelling of products, is best handled at the federal level—we heard that from a number of groups that appeared before the committee—so we're not having this patchwork all over the country and Ontario is doing one thing, for example, and Mani-

toba or other provinces are doing another thing. The plan we outlined last week is one we want to work on with the federal government to reduce the amount of toxins that Ontarians are exposed to, and one which would be asking companies to list the toxins they use and then submit plans which detail how they can reduce or eliminate the use of these toxins. I think it's best to work with the industry on how to make that list of toxins available to the public. So that's the rationale for the change.

The Chair: Any other comments?

Mr. Peter Tabuns (Toronto–Danforth): I would urge members of the committee to reject this amendment. I note that we have had representation in support of this bill, and particularly with regard to this section, from the Canadian Environmental Law Association, the Toronto Environmental Alliance, the Toronto Cancer Prevention Coalition, the Canadian Cancer Society, the Ontario College of Family Physicians, Environmental Defence, United Steelworkers, Dr. David McKeown, Toronto's chief medical officer of health, and the Registered Nurses Association of Ontario.

I note that this bill is directly in line with the priorities set out by 13 prominent environmental groups as to the things they want to see Ontario do around environmental issues, and that there is tremendous appetite for this kind of law and this kind of initiative on the part of the public.

I have been reviewing amendments with different supporters of the bill, and they make the argument that waiting for the federal government to act on this is not credible. Ontario needs to be a leader. California and the United States have been leaders, and in fact the California initiative has driven policy across the United States. Governor Arnold Schwarzenegger, who I would say would generally be seen as a pro-business governor, is an extremely strong defender of Proposition 65, the initiative that a big part of this act is modelled on. This Proposition 65, and hopefully this act, will lead to reformulation of products that will benefit a number of jurisdictions. The Registered Nurses Association of Ontario believes that the bill as written, with minor amendments that I have proposed, should stand and should go forward.

The Chair: Any further discussion? We'll call the question. All those in favour of the amendment?

Mr. Tabuns: A recorded vote.

Ayes

Scott.

Nays

Dhillon, Leal, Mossop, Tabuns, Racco.

The Chair: It is defeated. Are there any other comments?

So we go back to Ms. Scott again.

Ms. Scott: I move that subsection 13.1(2) of the Consumer Protection Act, 2002, as set out in section 1 of the bill, be struck out and the following substituted:

“Toxic substances

“(2) For the purposes of subsection (1), toxic substances are the substances listed in schedule 1 to the Canadian Environmental Protection Act, 1999 (Canada).”

Again, we think that we need to take the approach in Ontario that’s best for everyone if we coordinate the efforts at the federal level. The federal government has a list of toxic substances. We should utilize that list in Ontario. There is no harm in coordinating. Certainly, the government is talking as to the content of the list, and we know that late last year the federal government finished the massive categorization process on legacy chemicals, and the federal government also evaluates approximately 800 new chemicals every year.

So business in Ontario, especially the manufacturing sector, feels that different levels of government should be working together but with one list, and that should be from the federal level. So that’s the basis for the amendment.

The Chair: Further discussion?

Mr. Tabuns: I would argue that the bill should be left as written in this section. The World Health Organization has put together this list. It’s internationally recognized. Using the CEPA list gets us into consideration of toxic chemicals that have a variety of impacts, not necessarily cancer-causing. For consistency in this bill, and particularly with this section, if we’re concerned with protection against cancer, using the language that was originally put forward is important, again consistent with the priorities set forward by 13 of the top environmental groups in this province.

The Chair: Further discussion? We’ll have the vote.

Mr. Tabuns: Recorded vote.

Ayes

Scott.

Nays

Dhillon, Leal, Mossop, Tabuns, Qaadri, Racco.

The Chair: The amendment was defeated.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

On section 3 there appear to be four substantive amendments. The first is numbered 3.

Mr. Tabuns: I move that subsection 4.1(1) of the Environmental Protection Act, as set out in section 3 of the bill, be amended by adding the following paragraph:

“12. Any other data and reports that the Environmental Commissioner of Ontario requires.”

1610

This is a suggestion on the part of the Registered Nurses Association of Ontario. It recognizes the excellent work done by the Environmental Commissioner and ensures that in the act, his recommendations around the information that should be available to the public are taken into consideration in providing that information.

The Chair: Any discussion?

Mr. Jeff Leal (Peterborough): At this time, we feel that this motion is open-ended. It has some budgetary implications. At the Ministry of the Environment, we would like to look at this amendment and this issue further down the road, so at this time, we feel we can’t support it.

The Chair: Further discussion? All those in favour? Opposed, if any? Defeated.

Clause 4.1(2)(a): That is a PC motion.

Ms. Scott: I move that clause 4.1(2)(a) of the Environmental Protection Act, as set out in section 3 of the bill, be struck out.

For this motion and the subsequent motion, the rationale is the same. We don’t have any problem with the ministry compiling this central database of all the information which is easily searchable, based on a variety of criteria. Our concern is the unintended impact on business of posting all this information on the Web.

There’s no question that we strongly believe in reducing the presence of toxins in our environment, and we strongly believe that we need help from business to succeed in this province. But we also believe the two ideas are not mutually exclusive. We think there needs to be further discussion with the private sector before we make this change. That is why we would like these specific items removed from the bill in the hopes that we can work together with something in the future.

The Chair: Further discussion?

Mr. Tabuns: I’m curious as to Mr. Leal’s comments, but I’ll speak first.

The Chair: That’s okay with me.

Mr. Tabuns: Thank you, Chair.

Mr. Leal: We’re flexible.

Mr. Tabuns: He is, and it’s a wonderful thing on a Thursday afternoon.

I think that the right of communities to know what risks they’re taking with regard to emissions in their communities is a right that should be recognized as ahead of a variety of other rights. This is, frankly, a fairly modest suggestion. This information would be available on the basis of a freedom-of-information request, which is expensive and time-consuming. The information is there. With its posting, communities have the power in their hands to understand what’s going on in their area, and frankly, it gives them the opportunity, when they have to engage with companies around potential issues, to say, “We know what’s going on here.”

Having represented for a while a community that has dealt with a variety of toxic chemical issues—Canada Metal, a fairly infamous lead reprocessor, is located in my riding. We dealt with incinerators, we dealt with Aquatech Blue, which was an oil and toxic waste reprocessor. I know that in our community, this is a big issue. Recently, the Toronto Star has done articles on this. There is tremendous interest on the part of the environmental community in knowing what is actually going on within these companies and certainly an interest on the part of the public.

I would say to the opposition and to the government that what's being asked for here is quite modest. It will make a substantial difference to citizens and, for your political interests, is not something that should be opposed. This is information that, for the most part, you already have. Instead of putting the public through a wringer to get it, you're making it available to them. I would say that it's in your interest and the interests of the public that you move forward with it.

The Chair: Mr. Leal?

Mr. Leal: We believe that this clause should remain in this bill. We will be voting no to this amendment. We feel very strongly that there is an inherent right to know within the public and the province of Ontario, certainly through the EBR and websites where this information should be listed, easy access for the general public to get this information. On that basis, we will be not supporting this PC motion.

The Chair: Further discussion? All those in favour? Opposed, if any? Okay, it's defeated. Members, we have a vote in five minutes and 51 seconds. I'm going to suggest that we recess the committee to reconvene within five minutes after the announcement of the result of the vote in the House. Is that agreeable? Done.

The committee recessed from 1616 to 1627.

The Chair: Where were we? I think we did the second amendment, which was defeated. So we're into number 5, which is an NPD amendment.

Mr. Tabuns: I move that subsection 4.1(3) of the Environmental Protection Act, as set out in section 3 of the bill, be amended by adding the following clause:

“(c.1) the facility;”

This simply makes it possible for someone to search not only by name of a pollutant, a person or an address but also by the name of a facility, which I think would simply be seen as a housekeeping amendment and something suggested by the Registered Nurses' Association of Ontario.

The Chair: Any discussion?

Mr. Leal: We've been most co-operative so far. To provide a comment on this, I remember that when I was elected a councillor for the city of Peterborough early in 1985 or 1986, I think, we were talking about drafting bylaws and defining things, and “facility” was one of these words that the city solicitor at the time used to say we had to define in very clear and concise terms. I'm not sure that has been done in this case. We intend to study this issue further, but at this particular time we're not prepared to support this amendment.

The Chair: Any other discussion? We'll call the question, then. Recorded vote.

Ayes

Scott, Tabuns.

Nays

Dhillon, Leal, Mossop, Qaadri, Racco.

The Chair: The amendment is defeated.

That brings us to proposed amendment number 6.

Ms. Scott: I move that subsection 4.1(5) of the Environmental Protection Act, as set out in section 3 of the bill, be struck out.

It's similar to the rationale I gave earlier: While we don't mind the ministry compiling the central database of all this information, we strongly believe that we need to sit down with the private sector on how best to make the toxic substances known to the public.

The Chair: Discussion?

Mr. Tabuns: This amendment would essentially nullify public access to this information. Given that the government has already voted with the rest of the section, it would be consistent with its position on openness and community right to know to oppose this amendment on the part of the official opposition. I would hope that it continues taking the position it has taken for consistency's sake and also because I think it's the position that is most defensible to the public, to the environmental movement and to the public health movement in this province.

Mr. Leal: We will not be supporting this amendment. Mr. Tabuns has quite eloquently described the situation. We've listened very carefully to his thoughtful words on this particular amendment, and we will be voting no.

The Chair: Any further discussion? Okay, we'll have the vote on the amendment. All those in favour? Opposed? It is defeated.

Shall section 3 carry? Carried.

There are no amendments to section 4. Shall section 4 carry?

Mr. Tabuns: Actually, Mr. Chair—

The Chair: Some discussion? Sorry. Go ahead.

Mr. Tabuns: Even before discussion—I may be wrong.

The Clerk of the Committee (Ms. Tonia Gramnum): Section 4.1 goes after section 4.

Mr. Tabuns: But 4.1 would amend 4, would it not?

The Clerk of the Committee: Motion number 7 would follow section 4, because you're adding a new section and it would come right after 4, so we deal with 4 first.

Mr. Tabuns: I see. It's not an amendment to 4; it's simply a new piece of material.

The Clerk of the Committee: Right.

Mr. Tabuns: Thank you.

The Chair: There is a notice. Ms. Scott, do you want to speak to the notice?

Ms. Scott: We're recommending voting against section 4. The reason for notice rather than motion is that if the committee wishes to remove an entire section from the bill, the rules of parliamentary procedure require that the committee vote against the section, rather than pass a motion to delete it.

We bring this recommendation based entirely on feedback from the firefighting community, which presented to us at public hearings last week. They said:

“The intent of this provision is to require employers to submit material safety data sheets to their local fire departments. In theory, this information would enable firefighters to know what hazardous materials are on site when called to an incident.

“While we support the intent of this proposal, we have the following concerns about implementation: the cost of setting up, administering and maintaining a data storage system for the data sheets; the lack of staff at small fire departments to maintain the information; the lack of technological support and equipment to get the information out to the field in an efficient manner.

“Currently, few trucks in the province carry on-board computers and firefighters generally do not carry electronic devices that could contain this information.

“In light of these realities, we believe it would be better to devote existing resources to hiring more fire inspectors and prevention officers to visit employers in the community.”

That’s the end of the quote from the Ontario Professional Fire Fighters Association, and that’s why we’ve brought this notice before you today.

The Chair: Any more discussion?

Mr. Tabuns: I was very appreciative of the comments made by the firefighters when they were here. I thought about this section, and I thought about it again today when we were talking about the amendments that came after Andrea Horwath’s Bob Shaw bill. “Presumptive consent” can’t be the term, but the assumption that if someone in a fire department dies from cancer it’s workplace-related ties back in to this. I think that part of our task is not only to deal with firefighters when they are injured by a long process of exposure to toxic chemicals, but we also have a responsibility to protect them from those toxic chemicals.

As everyone well knows, I, as the author of a private member’s bill, can’t include an allocation of funds in the bill. What I can do is put forward measures that I think are important and press for adoption in the expectation that fulfillment of this section would require the government to make a decision that they’re going to put the funds in to actually carry it out. The government may vote against it, but I think, given the position they’ve taken on firefighters today, that it would be inconsistent for them to back off from action to reduce exposure of firefighters to toxic chemicals, so I would ask them to support this section.

The Chair: Mr. Leal.

Mr. Leal: We intend to support this section.

The Chair: You intend to support section 4? All right, we will call the question on section 4.

Shall section 4 carry? Those opposed? It’s carried.

That gets us to section 4.1. There is an NDP amendment, page 7.

Mr. Tabuns: I move that the bill be amended by adding the following section:

“4.1 The Act is amended by adding the following sections:

“Hazardous materials inventory

“39.1(1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous materials and all hazardous physical agents that are present in the workplace.

“Same

“(2) The inventory required by subsection (1),

“(a) shall contain such information as may be prescribed; and

“(b) shall be prepared in consultation with the committee or health and safety representatives, if any, for the workplace or with a worker selected by the workers to represent them, if there is no committee or health and safety representative.

“Same

“(3) Where an inventory required by subsection (1) is amended during a year, the employer, not later than the first day of February in the following year, shall prepare a revised version of the inventory incorporating all changes made during the preceding year.

“Identification of ingredients

“(4) Where, under the regulations, an employer is required to identify or obtain the identity of the ingredients of a hazardous material, the employer is not in contravention of the regulations if the employer has made every effort reasonable in the circumstances to identify or obtain the identity of the ingredients.

“Same

“(5) An employer shall advise a director in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of the hazardous material as required by the regulations.

“Exception

“(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a project in respect of materials to be used on the project.

“Floor plans

“(7) The employer shall keep readily accessible at the workplace a floor plan, as prescribed, showing the names of all hazardous materials and their locations and shall post a notice stating where the floor plan is kept in a place or places where it is most likely to come to the attention of workers.

“Hazardous materials substitutes

“39.2(1) No person shall use a hazardous material in a workplace where it is reasonably practicable to substitute a material for it that is not a hazardous material.

“Same

“(2) Where a hazardous material is to be used for any purpose in a workplace and an equivalent material that is less hazardous is available to be used for that purpose, the equivalent material shall be substituted for the hazardous material where reasonably practicable.”

This amendment was recommended at the urging of the United Steelworkers. It enhances the protection of people on the job from toxic chemicals. It’s consistent with the initiatives of the opposition party in their first amendment to reduce the number of toxic chemicals in the workplace. I would say that for the government it’s

an advantageous amendment in that it could again say it is taking action to reduce toxic chemicals in the workplace and the overall exposure of people in society to toxic chemicals, and I would urge that it be adopted.

The Chair: Any further discussion?

Mr. Leal: We will not be supporting this amendment at this time. Our approach is to have Bill 164 stay pretty much intact as the member, Mr. Tabuns, introduced it. We're certainly looking forward to our ministry review in the Ministry of Government Services and MOE, because there are many laudatory parts of this bill and we want to keep it intact and have the opportunity to do a more extensive review of this very serious issue and issues that are contained in this particular piece of legislation.

The Chair: Further comments? Okay, we'll call the question then.

Mr. Tabuns: Recorded.

Ayes

Scott, Tabuns.

Nays

Dhillon, Leal, Mossop, Qaadri, Racco.

The Chair: The motion is defeated.

Shall section 5 carry? Carried.

Shall section 6 carry? Carried.

Shall the title of the bill carry? Carried

Shall Bill 164 carry? Carried.

Shall I report the bill to the House? Carried.

Is there any other business of the committee?

We stand adjourned until 4 o'clock next Thursday to do clause-by-clause on Bill 161.

The committee adjourned at 1641.

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Mr. Peter Tabuns (Toronto–Danforth ND)

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Ms. Tonia Grannum

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Research and Information Services

Ms. Catherine Oh, legislative counsel,

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