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Thursday 10 May 2007

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Jeudi 10 mai 2007

**Standing committee on
the Legislative Assembly**

Protecting Vulnerable Workers
Act (Employment Agencies), 2007

**Comité permanent de
l'Assemblée législative**

Loi de 2007 sur la protection
des travailleurs vulnérables
(agences de placement)

Chair: Ted McMeekin
Clerk: Tonia Grannum

Président : Ted McMeekin
Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Thursday 10 May 2007

Jeudi 10 mai 2007

The committee met at 1600 in committee room 1.

**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): Okay, we can get started. I call the meeting to order. Thank you all.

We're here today with respect to Bill 161, An Act respecting employment agencies, a private member's bill presented in the name of Mr. Dhillon. Mr. Dhillon, I'm going to invite you to make opening comments before we proceed to clause-by-clause.

Mr. Vic Dhillon (Brampton West–Mississauga): Thank you, Chair. I'd just like to say a few things at the beginning of the clause-by-clause consideration of my bill. We've had a chance to listen to various stakeholders on this issue. We listened to their submissions and have made the following recommendations that we will be discussing today.

I'd just like to say that what we're dealing with here today, with respect to temp employment agencies, is not the bigger recruitment firms, like Kelly, Adecco etc., in the complaints that we've heard from our constituents in regard to the operation of these temp agencies. The other thing we've considered is that the Ontario Labour Relations Board is the best mechanism for dealing with complaints under this act, instead of the courts, because it takes a long time for courts to settle the complaints that are heard. The licensing scheme would be on a three-year term, instead of the "every March 31," for reasons which will be explained. The Ministry of Labour's employment standards officers would be the ones responsible for the investigation and inspection; they would have the powers. There will also be some amendments to address the reprisals issue.

That's basically the gist of the amendments in a nutshell. I look forward to further discussions.

Mr. Shafiq Qadri (Etobicoke North): Mr. Chairman, if I might, with your indulgence and the indulgence of the committee, just recognize the visiting delegation from the country of Pakistan and various national assem-

blies. We're honoured and privileged to have all of you here. We wish you all success with your visit conducted by USAID, in your deliberations in Toronto and Ottawa and beyond. Welcome.

The Chair: Yes, welcome. Thank you. It's good to have you here. We have much to learn from each other, so thank you for that.

Ms. Cheri DiNovo (Parkdale–High Park): Just one thing, Mr. Chair. I was looking through the motions and I have used, for the NDP motions, the word "supervisor." I look at the government motions, and I understand that the word that's been used is "director," so I'm wondering if, right off the bat, I could just change "supervisor" to "director." I don't have a problem with using the same terminology so that we're speaking the same language.

The Chair: Yes, that's fine. Great.

Ms. DiNovo: That's thanks, by the way, to Tonia Grannum.

The Chair: Our guiding light, without a doubt. My guiding light, anyways. Thank you.

All right, so we'll move into it. Are there any comments, questions or amendments to any section of the bill, and, if so, which section? I understand we get into it pretty quickly here.

Section 1, the first amendment: Mr. Dhillon.

Mr. Dhillon: I move that section 1 of the bill be struck out and the following substituted:

"Definitions

"1. In this act,

"board" means the Ontario Labour Relations Board; ('équivalent français')

"client" means a person,

"(a) who pays the operator of a temporary help agency, or a person related to the operator, for the labour of an employee,

"(i) of the operator,

"(ii) of a person related to the operator, or

"(b) on whose behalf payment is made to the operator of a temporary help agency, or to a person related to the operator, for the labour of an employee described in subclause (a)(i) or (ii); ('équivalent français')

"director" means the director of employment standards appointed under the Employment Standards Act, 2000; ('équivalent français')

"employment standards officer" means an employment standards officer appointed under the Employment Standards Act, 2000; ('équivalent français')

“‘licence’ means a licence under this act; (‘équivalent français’)

“‘prescribed’ means prescribed by the regulations; (‘équivalent français’)

“‘regulations’ means the regulations made under this act; (‘équivalent français’)

“‘temporary help agency’ means a business of entering into contracts under which,

“(a) employees of the operator of the business or of a person related to the operator perform labour for a client, and

“(b) the client, or another person acting on the client’s behalf, pays the operator or related person for the labour of those employees. (‘équivalent français’)

That’s basically definitions of different terms laid out, Chair.

The Chair: Any discussion or comment?

Ms. DiNovo: Sorry. I listened to that but I didn’t see where that was. What are we looking at?

The Chair: It’s the first yellow page.

Ms. DiNovo: Right, okay. I was looking at the white copy.

The Chair: Comments? All those in favour? Opposed, if any?

Ms. DiNovo: A question, Chair, before I’d like to vote. The amendment that we’re proposing regarding section 1 of the bill has, in fact, to do with the definition of what an employment agency actually is. Our concern, and I see it’s not our concern alone—I haven’t had a chance to read thoroughly the submission by Kelly, but I gather other people have a problem with the definition as well. So I just want to be sure that we’re going through it carefully.

So “‘temporary help agency’ means a business of entering into contracts under which,

“(a) employees of the operator of the business”—okay. Because there was raised by Parkdale legal, when they came, this practice, and it was the first time I heard of it, where businesses are treating their, we would say, employees or potential employees of the agency as independent contractors and franchising them out as supposed businesses, if you will, rather than employees. I just want to make sure we don’t allow that kind of activity to get through a loophole in the definition of the Employment Agencies Act, which is why I suggested the business of granting franchises, the business of providing training with incidental placement—because another way of getting around this bill, perhaps, that we heard from Parkdale legal was that people would pay for training, and then at the end of the training they would be placed, and again it wouldn’t be considered an agency even though it was, in fact, engaging in agency-like activities. So the hope was that we could somehow catch that in the definition. I’m not sure that this does, quite frankly, so I’m wondering if maybe Mr. Dhillon could address it.

“Employees of the operator of the business or of a person related to the operator”—for example, the franchisee angle would simply say, “Well, this is not my employee. They’re independent contractors, and all I’m

doing is putting one business together with another business.” My question is, how do we get at that and stop that from happening?

1610

Mr. Dhillon: That’s not the intent. This implies that we’re talking about an entity, called a temporary help agency or temp agency, that hires employees for their client and gets compensated. There’s no reference here to what you’re referring to in terms of contracting out.

Ms. DiNovo: But you do see what I’m saying: Such businesses would not call themselves temporary help agencies, although they’re in fact doing the work of temporary help agencies under this definition. Presumably the point of this bill is to assist those in precarious employment who are working through these agencies. What’s to prevent them from simply redefining themselves and so not falling under the jurisdiction of this bill and not having to get a licence and hence continuing? That’s my question. Parkdale legal had made the suggestion, which I brought forward, of the actual definition itself and tightening that up somewhat, which is why we moved NDP motion 1.1 about the very definition itself. Actually, having looked at the Kelly submission, they also have their own issues with this definition. I might not agree with them, but clearly there are problems with the definition itself unless we define it very stringently.

The Chair: Any more comment? I’ll call the question on the amendment. All those in favour? Opposed? Carried.

Shall section 1, as amended, carry? Carried.

That brings us to new section 1.1. The motion, I’m told, is now out of order, because we just passed the first motion. That doesn’t come as a surprise, right?

Ms. DiNovo: Mr. Chair, I just want to register my concern because, again, I believe this piece of jurisprudence is going to come into a lot of problems with the definition as stated, and really won’t help the people it’s aimed at helping.

The Chair: I respect that. Let’s register the honourable member’s concern about the definition in the minutes.

That gets us to section 2. Are there amendments? There are. This is a government amendment.

Mr. Dhillon: Chair, I believe we’re on 1b, which is an NDP amendment.

The Chair: We just ruled it out of order.

Mr. Dhillon: Okay. I move that section 2 of the bill be struck out and the following substituted:

“Licence required

“2. No person shall operate a temporary help agency unless licensed to do so by the director.”

It’s pretty straightforward, Chair.

The Chair: Any discussion? All those in favour?

Ms. DiNovo: Sorry.

The Chair: Sorry. I asked for discussion and didn’t see any.

Ms. DiNovo: I guess we’ll pick this up with our other motions. It’s striking out quite a bit, in some ways, but we’ll let it go anyway.

The Chair: Again, all those in favour? Opposed, if any? Carried.

Shall section 2, as amended, carry? Carried.

Section 3: Are there any amendments? By gosh, there are.

Mr. Dhillon: I move that section 3 of the bill be struck out and the following substituted:

“Licence, issue

“3(1) Subject to section 6, an applicant for a licence to operate a temporary help agency is entitled to be issued the licence by the director if the applicant,

“(a) applies in the required form;

“(b) pays the required fee; and

“(c) complies with any prescribed qualifications.

“Renewal

“(2) Subject to section 7, a licensee who applies for a renewal of a licence in accordance with this act and the regulations and pays the required fee is entitled to renewal of the licence by the director.

“Pending approval

“(3) A licensee who has applied for renewal of a licence may continue to operate while awaiting a decision from the director on the application if,

“(a) the application and the required fee have been received by the director at least 30 days prior to the expiry date of the licence; and

“(b) the licensee has not received a notice that the application has been refused.”

This amendment will clarify how a temporary agency would apply for a new licence. It would be consistent with the application process that would be familiar to the employer seeking approval of an hours of work agreement under the Employment Standards Act, 2000.

The Chair: Very good. Any discussion?

Ms. DiNovo: You knew I would. I see that “furnishes a prescribed security” is gone. “Complies with any prescribed qualifications” kind of begs the question, “What are the prescribed qualifications?” There’s no description or discussion of that. So I ask, what are the prescribed qualifications and where do we find them in the bill?

Mr. Dhillon: These criteria would be consistent with the application process as per the Employment Standards Act, and that would be addressed by the director.

Ms. DiNovo: But my understanding is that in introducing this bill, you’re introducing a licensing system that does not exist. Hence, the qualifications would need to be set out for what constitutes the ability to qualify for that licence. That’s not covered by the Employment Standards Act as it’s written.

If you’re leaving it up to the discretion of the director, that’s a huge thing to leave to regulations after the fact. Part of our concern about this bill is that it has no teeth, that it is really just a licence you hang on the bill and doesn’t mean much, except paying a fee. This was the situation in 2001 and before, when agencies were required to have licences. It didn’t make much difference then, and it won’t make much difference now, the way it’s written. That’s why we’re concerned about tightening

up some of these definitions to help the people this bill is presumably helping.

Mr. Dhillon: With respect to Ms. DiNovo’s concern about the act not having teeth, we will be getting into that in the amendments that will be coming forward; we’ll be addressing that.

Ms. DiNovo: Yes, and there is an amendment we have proposed in section 6. But I want at least to asterisk this with some follow-up somewhere. When you’re saying “complies with any prescribed qualifications,” what are they? Presumably you want to list them somewhere. I’m happy with moving on if we leave that as something that needs to be addressed further on in the bill at some point.

The Chair: We’re not going to move on conditionally; we have an amendment here that we have to deal with, one way or another. We’re not going to hostage the amendment to some asterisk or whatever else.

Ms. DiNovo: Then I’m certainly going to vote against this amendment. Also, I see that “furnishes a prescribed security” is gone; I didn’t even get to that. At least that’s asking for something, “prescribed security” again not defined. But it seems like a weakening already of what has been asked for, even in the original bill, which seems weak to begin with. I’ll certainly vote against this.

The Chair: Any further comment?

All those in favour of the amendment? Opposed, if any? Can we have a clear indication? I can only see a few hands.

All those in favour? Any opposed? It’s carried.

Shall section 3, as amended, carry? Carried.

Section 4: We have a government amendment.

1620

Mr. Dhillon: I move that section 4 of the bill be amended by striking out “on March 31 next” and substituting “three years”.

Basically, this is to indicate that a licence would be issued for a three-year period, unless it’s revoked earlier, obviously.

The Chair: Any comments or questions? No?

All those in favour? Opposed, if any? Carried.

Shall section 4, as amended, carry? Carried.

Section 5: a government amendment.

Mr. Dhillon: I move that section 5 of the bill be struck out and the following substituted:

“Display of licence

“5. A licensee shall display a copy of the licence in a conspicuous place in all premises in which the business is operated, where it is likely to come to the attention of the any of the licensee’s employees who attend the premises.”

The Chair: Any discussion? It’s pretty straightforward.

All those in favour? Opposed, if any? Carried.

Shall section 5, as amended, carry? Carried.

That gets us to section 6. There are two proposed amendments, the first being an NDP amendment.

Ms. DiNovo: Again, this comes under the general heading of trying to tighten this up and give it some teeth so that someone who displays this licence prominently is

saying something about the nature of their business and the way they carry it on. Obviously, what we're saying here seems to me to be quite straightforward and is an issue of common sense. If somebody has been convicted of offences under the act or under the Employment Standards Act or its predecessor, they wouldn't get a licence, and the Minister of Labour shall establish and maintain a database of convictions under this act, because if you don't have the database of convictions, you don't know if they've had one.

The Chair: Excuse me. Technically, you have to read the amendment before you comment.

Ms. DiNovo: Sorry. I'm new to this.

The Chair: It's not your fault; it's my fault. I should have caught that right up front. I apologize.

Ms. DiNovo: I move that section 6 of the bill be amended by adding the following subsections:

"Same

"(2) Subject to section 8, the supervisor shall refuse to issue a licence"—

The Chair: Excuse me. I think you agreed that you'd change the wording on that.

Ms. DiNovo: Oh yes. Sorry. "Subject to section 8, the director shall refuse to issue a licence to an applicant who otherwise has complied with the requirements of section 3 if the applicant or another person associated with the employment agency has been convicted of offences under this act or under the Employment Standards Act, 2000 or its predecessor.

"Database

"(3) To facilitate the application of subsection (2), the Ministry of Labour shall establish and maintain a database of convictions under this act and under the Employment Standards Act, 2000 and its predecessor.

"Reserve fund

"(4) Subject to section 8, the director may refuse to issue a licence to an applicant who otherwise has complied with the requirements of section 3 if the applicant does not have a satisfactory reserve fund to compensate for unpaid wages and benefits."

My rationale here is that we're tightening this up. We're saying that if somebody has actually been convicted of an offence under the Employment Standards Act, they shouldn't be given a licence, which seems pretty straightforward to me. How do we know that? Because we're asking that a database of such offences be kept so that one can refer to it. Without that, it's very difficult to track who has been convicted and who has not. We know there are people operating out there who have had convictions on their record.

Finally, this reserve fund is critical, because what's happening is that the employment agency is being paid up front, then they pay out to their employees—or we hope so; we don't know—and if they're not paid up front, how are they going to pay their temporary employees until they do get paid? They need a reserve fund that's substantial enough to warrant the number of employees they have on their payroll before they get the licence. It's a way of showing good faith and is certainly

a way of catching those who have been engaged in criminal activity, which seems to me the very bottom line of being able to qualify for a licence.

The Chair: Any comment?

Mr. Dhillon: I have just a brief comment. The offence in this case is not defined. I think to take away a licence based on one or a minor complaint would be unfair to all the other employees who would be employed under a temp agency. The database, it's our opinion, will be unfeasible. With respect to the reserve fund, you would expect that the client companies would pay their employees on a regular basis, so this shouldn't be necessary. We will be voting against this.

The Chair: Further comment?

Ms. DiNovo: Yes, certainly. I hope that the whole idea behind giving this licence is that we are expecting a certain standard of behaviour in business performance from the company we're giving the licence to. Again, I think it's critical that they have this reserve fund. They won't be able to pay their temporary employees, and that's the whole point of the licence: to make sure that they can do that. To assume that they can do that without anything in this bill kind of begs the point, it seems to me.

Again, the Employment Standards Act—there must be some way of tracking offences. If there's not a way of tracking offences, then how do you know they have been committed? We're simply asking for a tracking of offences. I realize that might be beyond the scope of this particular bill, but it does point to a huge and glaring hole in the enforcement of this.

I'm willing to be a little flexible on that database but certainly not flexible on the violations of the Employment Standards Act. Surely the whole point of this bill is to catch those who have violated the Employment Standards Act in the past; and if they have, then why are we going to be issuing them a licence? So that they can do it again? Anyway, that's the rationale. I would hope that the government wants to see that this licence has some effect, and I fear that unless this amendment is passed, it will not. They will simply conduct business as usual but with a licence on their wall.

The Chair: Any further discussion? All those in favour of the amendment?

Interjection.

Ms. DiNovo: No, it was the right thing to do.

The Chair: This is the government—this is the NDP. All those in favour? Opposed, if any? It's defeated.

There's then a government amendment.

Mr. Dhillon: I move that section 6 of the bill be struck out and the following substituted:

"Criteria for issue or renewal of licence

"6(1) The director may issue a licence to an applicant or renew the licence of an applicant if the director is of the view that it would be appropriate to do so.

"Same

"(2) In deciding whether it is appropriate to issue a licence to an applicant or renew the licence of an applicant, the director may take into consideration any factors

he or she considers relevant, and, without restricting the generality of the foregoing, he or she may consider,

“(a) any current or past contraventions of this act or the regulations on the part of the applicant;

“(b) any current or past contraventions of the Employment Standards Act, 2000 or the regulations made under it on the part of the employer;

“(c) the health and safety of employees;

“(d) any prescribed factors.”

This amendment would outline the criteria that the director of employment standards could take into consideration in determining whether to issue a licence or a renewal. The language is consistent with the discretion provided to the director of employment standards in determining whether to approve hours of work agreements under the Employment Standards Act.

The Chair: Any discussion?

Ms. DiNovo: Yes. First of all, I have a very great problem with “the director may”—so the word “may”—“take into consideration.” Again, what is the point of the licence if they may take into consideration? It implies they may not. One gets the implication here that they could contravene the Employment Standards Act, they could compromise the health and safety of employees, they could contravene even the very limited requirements of this act, which is basically to pay for their licence, and still get another licence. That seems to me absurd—patently absurd. So I would want to take at least that word “may” out and say “the director must take into consideration.” At the very least, you want to give it that much strength.

1630

The Chair: Any further comment? None. Okay, I’ll call the question. All those in favour? Opposed, if any? That is carried.

Shall section 6, as amended, carry?

Section 7: There are, as I understand it, two proposed amendments, one government and one from the third party. We’ll begin with the government amendment on page 7.

Mr. Dhillon: I move that section 7 of the bill be struck out and the following substituted:

“Refusal to renew and revocation

“7. Subject to section 8, the director may refuse to renew or may revoke a licence if, in the director’s opinion,

“(a) the licensee or, where the licensee is a corporation, any officer, director or employee thereof, has contravened or has knowingly permitted any person under his or her control or direction or associated with him or her in the operation of the temporary help agency operated under the licence to contravene any provision of this act or the regulations applying to the operation of the temporary help agency; or

“(b) the licence would be refused under section 6 if the licensee were making application for it in the first instance.”

This amendment recognizes the director’s ability to refuse to renew or revoke a licence. As raised by the

stakeholders, the qualifying terms “through lack of competence or with intent to evade the requirements of such provision” have been removed.

The Chair: Is there any discussion on this proposed amendment?

Ms. DiNovo: I have a question. Could you just explain why you were not happy with section 7?

Mr. Dhillon: Basically, there was a qualifying term which the stakeholders raised concern about, about the competence and the likelihood to evade the requirements of the provisions. So that has been removed.

Ms. DiNovo: Okay. Again, the same objection, really, as to the last amendment: The director “may”—at the very least, “should,” some language to indicate that this is a necessity for a licence. Clearly the way this is written—you don’t have to be a good lawyer to know that this essentially is a licence to not fulfill the requirements of the licence. Certainly I’ll be voting against it.

The Chair: Any other comments? All those in favour, please indicate. Those opposed, if any? It is carried, which makes, I’m now informed by the clerk, the subsequent motion out of order.

Shall section 7, as amended, carry? Those in favour? Opposed, if any? Carried.

That brings us to section 8. There are seven, beginning with the NDP motion found on page 7b, with the word “supervisor” changed.

Ms. DiNovo: Shall I read it?

The Chair: If you would, please.

Ms. DiNovo: I move that section 8 of the bill be struck out and the following substituted:

“Notice of proposal to refuse or revoke

“8(1) The director, when proposing to refuse to issue or renew a licence or to suspend or revoke a licence, shall serve notice of the proposal, together with written reasons, on the applicant or licensee, advising of the right to an internal review if requested in writing within 10 days after service of the notice of the proposal.

“Powers of director where no internal review

“(2) Where an applicant or licensee does not request an internal review under subsection (1), the director may carry out the proposal stated in the notice.

“Internal review and notice of outcome

“(3) Where an internal review is requested under subsection (1), the director shall reconsider the proposal and, within 10 days after receiving the request, serve notice of the outcome of the internal review, together with written reasons, on the applicant or licensee, advising of the right to a hearing by the board if application is made to the board within 15 days after service of the notice of the outcome of the internal review, and the applicant or licensee may within such time apply to the board for a hearing.

“Powers of director where no hearing

“(4) Where an applicant or licensee does not apply for a hearing in accordance with subsection (3), the director may carry out the proposal stated in the notice of the outcome of the internal review.

“Powers of board where hearing

“(5) Where an applicant or licensee applies to the board for a hearing in accordance with subsection (3), the board shall appoint a time for and hold the hearing and, on the application of the director at the hearing, may by order direct the director to carry out the proposal or refrain from carrying out the proposal and to take such action as the board considers the director ought to take in accordance with this act and the regulations, and for such purposes the board may substitute its opinion for that of the director.

“Service of notice

“(6) The director may serve notice under subsection (1) or (3) personally or by registered mail addressed to the applicant or licensee at the address last known to the director and, where notice is served by registered mail, the notice shall be deemed to have been served on the third day after the day of mailing unless the person to whom notice is being given establishes to the board that the applicant or licensee did not, acting in good faith, through absence, accident, illness or other cause beyond the control of the applicant or licensee receive the notice or order until a later date.

“Extension of time for hearing

“(7) The board may extend the time for making the application, either before or after expiration of the time fixed therein, if satisfied that there are apparent grounds for granting relief to the applicant or licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as the board considers proper consequent upon the extension.

“Continuation of licences pending renewal

“(8) Where, within the time prescribed for doing so or, if no time is prescribed, before expiry of the licence, a licensee has applied for renewal of the licence and paid the required fee, the licence shall be deemed to continue,

“(a) until the renewal is granted; or

“(b) where the licensee is served with notice that the director proposes to refuse to grant the renewal, until,

“(i) the time for requesting an internal review expires without a request, or

“(ii) if an internal review is requested,

“(A) the time for applying for a hearing expires without an application, or

“(B) a hearing is applied for and the board has made an order.

“Definition

“(9) In this section and in sections 9 and 10,

“‘Board’ means the Ontario Labour Relations Board.”

The Chair: You got through that well.

Ms. DiNovo: It’s a mouthful.

The Chair: This is a bit like exegesis versus eisegesis.

Ms. DiNovo: Absolutely. I’m a former clergyperson.

Clearly, what we’re trying to do here is to tighten up, again, the grounds so that we’re giving the bill some teeth and trying to make it very clear that we want the Ontario Labour Relations Board to be the board that the licensee appeals to or doesn’t, as the case may be, rather

than taking it to the court system. That’s the purpose here.

1640

The Chair: Any comment?

Mr. Dhillon: No comments.

The Chair: Thank you, Ms. DiNovo, for bearing with us and getting through that.

All those in favour of this motion? Opposed, if any? It is defeated.

Okay, now we have a series—one, two, three, four, five, six—of government amendments. Mr. Dhillon, I think you’re on.

Mr. Dhillon: I move that subsection 8(1) of the bill be struck out and the following substituted:

“Notice of proposal required before refusal to issue or to renew, or revocation of licence

“8(1) If the director proposes to refuse to issue a licence or to renew one, or to revoke a licence, he or she shall serve notice of the proposal, together with written reasons, on the applicant or licensee advising of the right to a hearing by the board if application is made to the board within 15 days after service of the notice by the director, and the applicant or licensee may within such time apply to the board for a hearing.”

The Chair: Okay. Any discussion?

Mr. Dhillon: Like I said earlier, we’re proposing that an appeal of a decision not to issue, renew or revoke a licence would be heard by the Ontario Labour Relations Board.

The Chair: Any further discussion?

Ms. DiNovo: Well, I’m pleased somewhat to see that we’re not having them go to the Supreme Court. So that’s good. It’s good that the hearing is going to go before the Ontario Labour Relations Board.

I would suggest that at the very least we have to spell out what board we’re talking about here—the Ontario Labour Relations Board. Clearly, of course we would like to see it much more stringent in terms of how that happens because, again, here is an issue just like the others where someone can squirm around the letter of the law and continue doing business when they shouldn’t be. But I have to say that it is better than what is in the original bill, because it puts the possible temporary agency licensee in the general direction of the Ontario Labour Relations Board. But, again, the problem here is that we haven’t asked them to do much, if anything, by way of not qualifying for that licence.

However, it is in the right direction, but not in the right direction enough, so I’m going to vote against it. I just had to say something nice about the government.

The Chair: Thank you. Any other further discussion? Okay, we’ll call the question. All those in favour? Opposed, if any? Carried.

Subsection 8(2).

Mr. Dhillon: I move that subsection 8(2) of the bill be amended by striking out “supervisor” and substituting “director”.

It’s just a housekeeping motion.

The Chair: All in favour? Great. Let it be noted that that was carried without a dissenting vote.

Subsection 8(3).

Mr. Dhillon: I move that subsection 8(3) of the bill be struck out and the following substituted:

“Powers of board

“(3) Where an applicant or licensee applies to the board for a hearing in accordance with subsection (1), the board shall appoint a time for and hold the hearing and, on the application of the director at the hearing, may by order direct the director to carry out the proposal or refrain from doing so and take such other action as the board considers the director ought to take in accordance with this act and the regulations, and for such purposes the board may substitute its opinion for that of the director.”

Again, it's just another housekeeping amendment to recognize the Ontario Labour Relations Board.

The Chair: Okay. Further discussion? Seeing none, all in favour? Opposed? Carried.

Subsection 8(4).

Mr. Dhillon: I move that subsection 8(4) of the bill be amended,

“(a) by striking out ‘supervisor’ wherever it appears and substituting in each case ‘director’; and

“(b) by striking out ‘to the judge to whom application is made for a hearing’ and substituting ‘before the board’.”

The Chair: Discussion?

Ms. DiNovo: Again, I've made my thoughts known on this section, but surely at the very least we have to spell out that this is the Ontario Labour Relations Board we're speaking about here. This is really a friendly amendment to an amendment: Where it says “board,” we say “Ontario Labour Relations Board.” Otherwise, what board?

The Chair: Is that a problem?

The Clerk of the Committee (Ms. Tonia Grannum): It's in the definition.

Ms. DiNovo: It is? Okay.

The Chair: Any further discussion? All those in favour? Opposed, if any? Subsection 8(4) is carried.

We're going on to subsection 8(5).

Mr. Dhillon: I move that subsection 8(5) of the bill be struck out and the following substituted:

“Extension of time for hearing

“(5) If an application is made by an applicant or licensee for a hearing under subsection (1), the board may extend the time for making the application, either before or after expiration of the time fixed therein, if satisfied that there are apparent grounds for granting relief to the applicant pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the board may give such directions as it considers proper consequent upon the extension.”

It's housekeeping.

The Chair: Discussion? All those in favour? Opposed, if any? It's carried.

Subsection 8(6).

Mr. Dhillon: I move that clause 8(6)(b) of the bill be struck out and the following substituted:

“(b) where the licensee is served with notice that the director proposes to refuse to grant the renewal, until the time for applying to the board for a hearing expires and, where a hearing is applied for, until the board has made an order.”

This is similar to the previous one.

The Chair: Discussion?

Ms. DiNovo: Yes, I just feel it's incumbent on me. Clearly, the government has broken up, section by section, where I put the amendment all in one piece.

One of the concerns we have here is that it's very easy to get around this. That's why in our amendment we suggested registered mail, we suggested how we go about this. There are very few teeth, there's very little detail, so that somebody could easily drag this out forever. Meanwhile, presumably, the people who are working for them in a temporary agency could, for example, not be being paid, not be getting benefits, be working in unsafe circumstances.

The whole reason for tightening up these various sections, in terms of how people are served and how justice is sought, is because there are literally people out there risking their lives in some instances while this process is going on. So you want to make it as tight as possible.

I just want to let the record show that, again, here is a situation where it's not tight enough to really safeguard the interests of workers.

The Chair: Any further discussion? All those in favour? Opposed, if any? That is carried.

That begs the question, shall section 8, as amended, be carried? Carried.

That brings us to section 9. The Chair notes that there are three amendments: a third party amendment and two government amendments.

We'll begin with page 13(a), the third party motion.

Ms. DiNovo: I move that section 9 of the bill be struck out and the following substituted:

“Parties

“9(1) The director, the applicant or licensee who has applied for the hearing and such other persons as the board may specify are parties to the proceedings before the board under section 8.

“When notice to be given

“(2) Notice of a hearing under section 8 shall afford to the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

“Examination of documentary evidence

“(3) An applicant or licensee who is a party to proceedings under section 8 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.”

Again, this was in a sense pursuant to the amendment that was voted down, but to give the licensees and applicants an opportunity to defend themselves.

1650

The Chair: Any discussion? Hearing none, I'll call the question on the amendment. All those in favour? Opposed, if any? It's defeated.

Government motion, subsection 9(1).

Mr. Dhillon: I move that subsection 9(1) of the bill be amended,

(a) by striking out "supervisor" and substituting "director"; and

(b) by striking out "judge" wherever it appears and substituting in each case "board".

The Chair: Similar to a previous amendment. Any discussion? All those in favour? Carried.

Subsections 9(4) and (5), government motion.

Mr. Dhillon: I move that subsections 9(4) and (5) of the bill be struck out and the following substituted:

"Rules of practice

"(4) The chair of the board may make rules governing the board's practice and procedure and the exercise of its powers, and may provide for forms and their use.

"Rules not regulations

"(5) Rules made under this section are not regulations within the meaning of the Regulations Act.

"Same, transition

"(6) On the day on which part III of the Legislation Act, 2006 comes into force, subsection (5) is amended by striking out 'the Regulations Act' and substituting 'part III (regulations) of the Legislation Act, 2006'."

The Chair: Any discussion? All those in favour? Opposed, if any? It's carried.

That begs the question, shall section 9, as amended, carry? Carried.

There's a notice: Mr. Dhillon recommends voting against section 10. So do the New Democrats. Any discussion on section 10, therefore?

Shall section 10 carry? No. It is lost.

Section 11: I note there are two amendments, the first being an NDP amendment.

Ms. DiNovo: I move that section 11 of the bill be amended,

(a) by striking out "may provisionally refuse" and substituting "shall provisionally refuse"; and

(b) by striking out "sections 8, 9 and 10" and substituting "sections 8 and 9".

Again, strengthening and a little housekeeping.

The Chair: Okay. Legal counsel, any comment here?

Mr. Albert Nigro: No, thank you.

The Chair: Okay. Any further discussion? All those in favour? Opposed, if any? Carried.

That brings us to motion 16.

Mr. Dhillon: I move that section 11 of the bill be struck out and the following substituted:

"Provisional order of director

"11. Despite section 8, the director, by notice to a licensee, and without a hearing, shall provisionally refuse renewal of or revoke the licensee's licence where the

operation of the temporary help agency under the licence is, in the director's opinion, an immediate threat to the interests of persons dealing with the agency or to the public interest and the director so states in the notice, giving reasons, and thereafter sections 8 and 9 apply as if the notice given under this section were a notice of proposal to revoke the licence served under subsection 8(1)."

This would allow a licence to be revoked instead of being suspended. It would allow better flexibility for the administration and enforcement of the bill. Where a licence is revoked, a temporary help agency would have the right to appeal or to apply for a new one.

The Chair: Okay. Comment from the clerk or legal counsel?

The Clerk of the Committee: You just amended section 11 by striking out words and substituting words, and we carried that. Now you're going to strike out what you just amended. Is there a way to word it that—

Mr. Dhillon: Can we ask advice from legal counsel?

Mr. Nigro: Well, the only thing I can suggest is, "I move that section 11 of the bill, as amended by the NDP motion to amend section 11, be struck out," because it has now been amended.

Mr. Dhillon: That's fine.

The Chair: That's consistent, I think. That that was struck out shall be similarly struck out in the subsequent motion.

Ms. DiNovo: Just to be clear here, and then end without a hearing "shall provisionally refuse renewal" is what we're then saying—right?—not "may," which we just passed in the motion.

The Chair: Did you see that, Mr. Dhillon, the second line of 11, where it says "may"? We had changed it in the previous amendment to "shall."

Mr. Dhillon: That's fine.

The Chair: You're okay with that?

Mr. Dhillon: Yes.

The Chair: Okay.

The Clerk of the Committee: You had a replacement motion, 16r. That's the one that actually does say "shall."

Mr. Dhillon: Right.

The Clerk of the Committee: That's the one you should have—

Mr. Dhillon: I read the wrong—yeah.

The Clerk of the Committee: So if we withdraw—

The Chair: So let's withdraw this and—

Mr. Dhillon: Do you want me to read the replacement?

The Clerk of the Committee: Yes.

The Chair: The only difference in the reading is the word "shall"? Again, the Chairman's fault. My apologies. It's the one white sheet in the whole bunch, and I missed it.

Mr. Dhillon: My apologies, Chair. I had that before.

I move that section 11 of the bill, as amended by the motion of the NDP, be struck out and the following substituted:

"Provisional order of director

"11. Despite section 8, the director, by notice to a licensee, and without a hearing, shall provisionally refuse renewal of or revoke the licensee's licence where the operation of the temporary help agency under the licence is, in the director's opinion, an immediate threat to the interests of persons dealing with the agency or to the public interest and the director so states in the notice, giving reasons, and thereafter sections 8 and 9 apply as if the notice given under this section were a notice of proposal to revoke the licence served under subsection 8(1)."

The Chair: All in favour? Carried.

Shall section 11, as amended, carry? Okay.

Shall section 12 carry?

Mr. Dhillon, you're recommending voting against section 12?

Mr. Dhillon: Yes, Chair.

The Chair: Shall section 12 carry? Those in favour? Those opposed?

Ms. DiNovo: Sorry. Question: Why? Why are you recommending voting against section 12?

The Chair: The question, Mr. Dhillon, is why are you pulling this out?

Mr. Dhillon: Yes, Chair, one moment. It's just to eliminate the unnecessary administrative burden. A copy of the licence can be displayed at the various branches of a temp agency. If they do have branches, they can just photocopy it and display it.

1700

Ms. DiNovo: I thought that was the intention of the bill, and I thought—I'm just looking for where it appears in another place. I thought we had just voted that we wanted them to display—

Mr. Dhillon: Yes. There would be one original. If they're franchisees or if they're other branches, they can photocopy the licence and display it in each of the branches.

Ms. DiNovo: Okay. I draw the committee's attention to section 5. This is motion 3 of the government. It says, "A licensee shall display a copy of the licence in a conspicuous place in all premises in which the business is operated, where it is likely to come to the attention of any of the licensee's employees who attend the premises," which is actually stronger than section 12.

The Chair: You're not disputing that, as I understand.

Mr. Dhillon: No, I'm not.

Ms. DiNovo: So basically what Mr. Dhillon is saying is that we're substituting something a little stronger for section 12, is that correct?

The Chair: That's correct.

Ms. DiNovo: Okay. As long as we understand that, fine.

The Chair: You've recommended, Mr. Dhillon, that the committee vote against section 12?

Mr. Dhillon: Yes, Chair.

The Chair: Okay. All in favour of section 12? Those opposed? Everybody. It's not carried. Are those the right words, "Not carried"?

The Clerk of the Committee: Yes.

The Chair: Okay. That brings us to section 13, a government motion found on page 17.

Mr. Dhillon: I move that section 13 of the bill be amended by striking out "Minister of Labour" and substituting "director".

The Chair: Any discussion?

Mr. Dhillon: Technical amendment.

The Chair: Okay. All in favour? Carried.

Shall section 13, as amended, carry? Carried.

Section 14: a government amendment.

Mr. Dhillon: I move that section 14 of the bill be amended by striking out "for employment agencies or any class of employment agency" and substituting "by temporary help agencies".

The Chair: Any discussion? Ms. DiNovo.

Ms. DiNovo: Again, as a former agency owner, many agencies are permanent employment agencies but also do temporary placement. If you simply restrict it to those who call themselves "temporary agencies," you're going to miss a great many agencies that are involved in temporary placement as part, but not all, of their business. Surely we want to make sure that those agencies as well are licensed. Again, this covers a huge swath of agencies that are not only temporary agencies. I'm thinking of some of the very largest ones, Drake, for example. Even Office Overload does permanent placement occasionally. I think this very simple little section might just negate the entire bill if you don't make the definition a little broader. Going back to the earlier amendment, we would like to see it even broader still, but just "temporary help agencies"—presumably someone could call themselves an "employment agency" and not a "temporary help agency," even though they do 100% temporary help, and not have to get a licence. Is that really what we're saying here?

The Chair: Any further discussion? The Chair will put the question on the amendment. Those in favour? Opposed? It's carried.

Shall section 14, as amended, carry? Carried.

On 14.1, there's a government amendment found on page 19.

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

"Joint and several liability for wages

"14.1(1) The operator of a temporary help agency and the operator's client are, in relation to any employee of the temporary help agency for whose labour the client has agreed to pay the operator, jointly and severally liable for any wages owing to that employee under subsection 11(1) or (5) of the Employment Standards Act, 2000.

"Exception

"(2) Except as prescribed, the client is not liable for termination pay, severance pay or amounts deemed under subsection 62 (2) of the Employment Standards Act, 2000 to be unpaid wages owing to the employee.

"Employment Standards Act, 2000

"(3) This section is enforceable against the client under the Employment Standards Act, 2000 as if the

operator of the temporary help agency and the client were one employer under section 4 of the act.”

This amendment would make the client company and the temp agency liable for unpaid wages. Currently, under the Employment Standards Act, the temp agency is only liable—

The Chair: Under the Employment Standards Act, 2000, right?

Mr. Dhillon: Yes—even though the client company receives the benefit of the services provided by the temp worker. Also, this would provide a regulation-making power to allow termination pay and severance pay to be added at a later date.

The Chair: Discussion?

Ms. DiNovo: I think it’s a very good thing.

The Chair: Okay. All in favour of this very good thing? Carried.

Section 14.2.

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

“Inspection by employment standards officers

“14.2(1) An employment standards officer may on notice at any reasonable time enter upon the business premises of a person operating a temporary help agency or a client of a temporary help agency to make an inspection.

“Powers during an inspection

“(2) An employment standards officer conducting an inspection may,

“(a) examine a record or other thing that the officer thinks may be relevant to the inspection;

“(b) require the production of a record or other thing that the officer thinks may be relevant to the inspection;

“(c) remove for review and copying a record or other thing that the officer thinks may be relevant to the inspection;

“(d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and

“(e) question any person on matters the officer thinks may be relevant to the inspection.

“Obstruction

“(3) No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an employment standards officer during an inspection.

“Same

“(4) No person shall,

“(a) refuse to answer questions on matters that an employment standards officer thinks may be relevant to an inspection; or

“(b) provide an employment standards officer with information on matters the officer thinks may be relevant to an inspection that the person knows to be false or misleading.

“Separate inquiries

“(5) No person shall prevent or attempt to prevent an employment standards officer from making inquiries of

any person separate and apart from another person under clause (2)(e).”

The Chair: Any discussion?

Mr. Dhillon: This amendment outlines the inspection powers of the employment standards officer to ensure compliance with the act. It’s basically modelled after the powers granted under the Consumer Protection Act.

The Chair: Further discussion?

Ms. DiNovo: I don’t have a problem except that, again, in the larger picture, the problem is with the prosecution. Here’s this employment standards officer going in and doing all this good work, and then it comes to naught because there are so many loopholes that the temporary—or whatever they’re going to call themselves—can get around and about this.

My other major concern here is that there is nothing in this act that deals with the number of employment standards officers, the number of times someone will possibly be visited, the regulations that really compel any enforcement of this act at all. For example, we know that only 1% of all employers across Ontario ever get a visit from a government agent—of any sort, for that matter, but certainly around employment standards. So now we’re going to ask this already over-committed pool of employment standards officers to add to their burden and now they’re going to be inspecting agencies as well. It sounds good, but it ain’t going to fly because there’s not enough of them to begin with, and they’re already overburdened.

So I would certainly want to see—again, this is in the regulatory aspect of this—that there’s some funding put toward hiring more employment standards officers if we’re going to be asking them to do more work. I’m not sure, Mr. Chair, where we would put that in this bill, because there’s not money attached here, but without it, it really doesn’t mean much.

1710

The Chair: Any further discussion? Those in favour of this amendment? Opposed, if any? It’s carried.

That brings us to 14.3, which is three pages, beginning on page 21—which you have to read, unfortunately, Mr. Dhillon.

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

“Search with warrant

“14.3(1) Upon application made without notice by an employment standards officer, a justice of the peace may issue a warrant if he or she is satisfied on information under oath that there is reasonable ground for believing that,

“(a) a person has contravened or is contravening this act or the regulations; and

“(b) there is,

“(i) in any building, dwelling, receptacle or place anything relating to the contravention of this act or the regulations, or

“(ii) information or evidence relating to the contravention of this act or the regulations that may be obtained

through the use of an investigative technique or procedure or the doing of anything described in the warrant.

“Powers under warrant

“(2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an employment standards officer,

“(a) to enter or access the building, dwelling, receptacle or place specified in the warrant;

“(b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;

“(c) to exercise any of the powers specified in subsection (10);

“(d) to use any investigative technique or procedure or do anything described in the warrant.

“Entry of dwelling

“(3) Despite subsection (2), an employment standards officer shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

“(a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and

“(b) the justice of the peace authorizes the entry into the dwelling.

“Conditions on search warrant

“(4) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

“Expert help

“(5) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the employment standards officer in respect of the execution of the warrant.

“Time of execution

“(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

“Expiry of warrant

“(7) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an employment standards officer.

“Use of force

“(8) An employment standards officer may call upon police officers for assistance in executing the warrant and the employment standards officer may use whatever force is reasonably necessary to execute the warrant.

“Obstruction

“(9) No person shall obstruct an employment standards officer executing a warrant under this section or withhold from him or her or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

“Assistance

“(10) An employment standards officer may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance.

“Return of seized items

“(11) An employment standards officer who seizes any thing under this section or section 14.4 may make a copy of it and shall return it within a reasonable time.

“Admissibility

“(12) A copy of a document or record certified by an employment standards officer as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.”

The Chair: Do you want to comment on any of that, or is that sufficient? Any comment?

Ms. DiNovo: I commend the fact that this sounds tough, but the reality is that it sounds tough but it's enforcing what, exactly? I mean, what are they going after these agencies for? That they don't have a licence on their wall? You're going to get police officers in here to take these people out because they don't have a piece of paper hanging up and they haven't paid their triannual fee? Because there's no teeth in the sense of what we're asking them to do to get that licence—they could have violated employment standards, they can weasel around the hearing of recommendations and put it off forever—I can't ever imagine this actually coming to be.

But, hey, I guess it's good to sound tough rather than be tough in terms of breaking of the employment standards, and it certainly builds on the measly little three-liner that section 14 used to be. But, again, there's something blackly funny about going after an agency with this much strength just because they don't have a licence on their wall without any further stipulations about what that licence means.

I'm going to vote for it. I just wanted to read that into the record.

The Chair: All those in favour? Carried without a dissenting vote.

That brings us to section 14.4.

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

“Seizure of things not specified

“14.4 An employment standards officer who is lawfully present in a place pursuant to a warrant or otherwise in the performance of his or her duties may, without a warrant, seize any thing in plain view that the employment standards officer believes on reasonable grounds will afford evidence relating to a contravention of this act or the regulations.”

This outlines the inspection powers of the employment standards officer to ensure compliance and, again, it's

modelled after the powers granted under the Consumer Protection Act.

The Chair: Any discussion?

Ms. DiNovo: Again, not enough employment standards officers to do the job that they're required to do now; so the problems of enforcement and the problems of what they're actually enforcing, which is, as the bill was written, not very much.

The Chair: Shall this amendment carry? Opposed? Carried.

That brings us to section 14.5.

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

"Searches in exigent circumstances

"14.5(1) An employment standards officer may exercise any of the powers described in subsection 14.3(2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant.

"Dwellings

"(2) Subsection (1) does not apply to a building or part of a building that is being used as a dwelling.

"Use of force

"(3) The employment standards officer may, in executing authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

"Applicability of section 14.3

"(4) Subsections 14.3(5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section."

The Chair: Any discussion? Okay. All those in favour? Carried.

Section 14.6.

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

"Posting of notices

"14.6 An employment standards officer may require the operator of a temporary help agency to post and to keep posted in or upon the operator's premises in a conspicuous place or places where it is likely to come to the attention of any of the operator's employees who attend the premises,

"(a) any notice relating to the administration or enforcement of this act or the regulations that the employment standards officer considers appropriate; and

"(b) a copy of a report or part of a report made by the employment standards officer concerning the results of an inspection or investigation."

1720

The Chair: Any discussion?

Ms. DiNovo: I just feel very sorry for these poor, beleaguered and overworked employment standards officers who are going to go to all this trouble to carry out these incredible searches and seizures and then have them come to nothing because the director "may" but not "should" enforce any of this. Of course, there are all sorts of ways of getting around even that, depending on what you call yourself—interesting.

The Chair: I'll call the question on that, on 14.6. All those in favour? Anybody opposed? Oh, good. Carried.

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

"Certificate of appointment

"14.7 An employment standards officer exercising any power under section 14.1, 14.2, 14.3, 14.4, 14.5 or 14.6 shall, on request, provide evidence of his or her appointment under the Employment Standards Act, 2000."

The Chair: It's "produce evidence," not "provide."

Mr. Dhillon: Yes, "produce evidence of his or her appointment under the Employment Standards Act, 2000."

It's pretty straightforward, Chair.

The Chair: Any discussion? Those in favour? Those opposed? Carried.

Section 14.8.

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

"Compellability

"Employment standards officer

"14.8(1) An employment standards officer is not a competent or compellable witness in a civil proceeding respecting any information given or obtained, statements made or received, or records or other things produced or received under this act except for the purpose of carrying out his or her duties under it.

"Records

"(2) An employment standards officer shall not be compelled in a civil proceeding to produce any record or other thing he or she has made or received under this act except for the purpose of carrying out his or her duties under this act.

"Persons from board

"(3) Except with the consent of the board, none of the following persons may be compelled to give evidence in a civil proceeding or in a proceeding before the board or another board or tribunal with respect to information obtained while exercising his or her powers or performing his or her duties under this act:

"1. A board member.

"2. The registrar of the board.

"3. An employee of the board."

The Chair: Any discussion? All those in favour? Carried without dissenting vote.

Section 14.9.

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

"Reprisal

"14.9(1) No client of an operator of a temporary help agency or person acting on behalf of a client shall intimidate or penalize an employee of the operator or threaten to do so because the employee,

"(a) asks the client or the operator to comply with the Employment Standards Act, 2000 and its regulations;

"(b) makes inquiries about his or her rights under the Employment Standards Act, 2000;

"(c) files a complaint with the ministry under the Employment Standards Act, 2000;

“(d) exercises or attempts to exercise a right under the Employment Standards Act, 2000;

“(e) gives information to an employment standards officer;

“(f) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under the Employment Standards Act, 2000; or

“(g) is or will become eligible to take a leave, intends to take a leave or takes a leave under part XIV of the Employment Standards Act, 2000.

“Termination of assignment

“(2) Without restricting the generality of subsection (1), no client of an operator of a temporary help agency or person acting on behalf of a client shall terminate or seek the termination of the assignment of an employee of the operator to the client for any reason described in subsection (1).

“Onus of proof

“(3) In any proceeding under this act, the onus of proof that a client did not contravene this section lies upon the client.

“Enforcement

“(4) This section is enforceable against the client under the Employment Standards Act, 2000 as if the client were an employer of the employee under that act.”

Ms. DiNovo: I don't have a problem with this. Again, the general caveat is that it's virtually unenforceable, particularly in this instance, where you're looking at precarious employment for people, many of them immigrants who don't have English language skills and who may not see that licence or be able to read that licence on the wall. There's no way really of getting this information out to them. They might think this sounds wonderful, but the reality of actually phoning somebody and getting some prosecution happening that would actually change their lives in any way is virtually untouched here, even though this is there.

It's sad that the letter of the law will not be applied here, because this is exactly what we want to see happen and that won't happen with this bill.

The Chair: Any further discussion? All those in favour? Carried.

All that having been done, shall section 14, as amended, be carried?

Interjection.

The Chair: We don't need to ask that; you can forget that. We did section 14. These are new ones, so they're not amendments to anything. We're making history as we pass each of these resolutions.

We can go to section 15, page 28, the government.

Mr. Dhillon: I move that section 15 of the bill be struck out and the following substituted:

“Offence

“15. Every person who contravenes this act or the regulations or fails to comply with any requirement under this act or the regulations is guilty of an offence and on conviction is liable,

“(a) if the person is an individual, to a fine of not more than \$50,000 or to imprisonment for a term of not more than 12 months or to both;

“(b) subject to clause (c), if the person is a corporation, to a fine of not more than \$100,000; and

“(c) if the person is a corporation that has previously been convicted of an offence under this act,

“(i) if the person has one previous conviction, to a fine of not more than \$250,000, and

“(ii) if the person has more than one previous conviction, to a fine of not more than \$500,000.”

These are setting out the penalties for the violation of the act.

Ms. DiNovo: I like it. I think this adds some strength to the bill—not that it's ever going to be enforced, but it certainly sounds good.

There's one larger issue, though. In light of what we've already decided here, I'm noticing that at the top of every page it says, “An Act respecting employment agencies.” Does the government not want to change that to “temporary agencies” all along the way?

Mr. Dhillon: We will be changing that.

Ms. DiNovo: Therein lies the problem.

The Chair: Any further discussion? All those in favour? Carried.

Shall section 15, as amended, carry? Carried.

Section 16: page 29.

Mr. Dhillon: I move that section 16 of the bill be struck out and the following substituted:

“Regulations

“16. The Lieutenant Governor in Council may make regulations,

“(a) regulating and controlling the manner in which the business of temporary help agencies shall be operated;

“(b) prescribing the records, books and accounts that shall be kept by the operator of a temporary help agency;

“(c) regulating the fees that may be charged by the operator of a temporary help agency to an employee or prospective employee of the operator, or prohibiting the charging of such fees;

“(d) prohibiting or regulating the making of agreements, between operators of temporary help agencies and clients, that prohibit or impose restrictions on the hiring of an employee of the operator by a client and, without restricting the generality of the foregoing, regulating the making of agreements by limiting the amount that the client can be required to pay to the operator in the event of such a hiring;

“(e) requiring the operator of a temporary help agency who assigns an employee to a client to give the employee, not less than the prescribed number of hours before the employee is to report to the client, a written statement setting out,

“(i) the client's name, address and telephone number, and

“(ii) the time at which the employee is to report to the client;

“(f) prescribing anything that is referred to in this act as being prescribed;

“(g) prescribing any or all of the following for the purposes of subsection 14.1(2):

“(i) termination pay,

“(ii) severance pay,

“(iii) amounts deemed under subsection 62(2) of the Employment Standards Act, 2000 to be unpaid wages owing to the employee.”

1730

The Chair: Any discussion?

Ms. DiNovo: First of all, I don't want “may,” and I want “shall,” of course—“the Lieutenant Governor in Council shall make regulations”—because regulations are absolutely necessary. There are temporary agencies out there that are charging their clients a fee for applying. We, in the New Democratic Party, think it should be illegal that you charge someone a fee simply for applying to your agency to look for work, and this section doesn't do anything about that.

I would like to propose an amendment to this bill declaring that charging of fees to applicants of temporary agencies be made illegal, and I would like that noted.

The Chair: Okay, we'll note that. Any further discussion? All those in favour, then, of this amendment on page 29? Opposed, if any? It's carried.

Shall section 16, as amended, carry? Carried.

Ms. DiNovo: Excuse me, Mr. Chair. I did propose an amendment, so we'd have to vote on my amendment, as well. Do I have to get it in writing to you?

The Chair: You've got to move it. You can't just reference it. You asked that it be noted, which would normally go in the minutes.

The Clerk of the Committee: We'd have to seek unanimous consent to reopen this section to deal with it.

The Chair: We need unanimous consent to reopen it because we carried the motion. Is there unanimous consent?

Mr. Dhillon: No.

The Chair: Okay. So shall section 16, as amended, carry? Opposed? Carried.

Shall section 17 carry? Carried.

Section 18: There is a government amendment found on page 30.

Mr. Dhillon: I move that section 18 of the bill be struck out and the following substituted:

“Short title

“18. The short title of this act is the Temporary Help Agencies Act, 2007.”

The Chair: Any discussion?

Ms. DiNovo: Again, it would be so easy to evade this. This is child's play. All you have to do is call yourself an employment agency and not a temporary help agency. At least the original title of the bill said something. It said “Protecting Vulnerable Workers Act (Employment Agencies).” Now, really, by simply changing the title of what you do, you can evade all of this bill and all of your responsibilities under this licensing system. That seems to me to be simply a huge waste of the Legislature's

time, a huge waste of our time on this committee. At the end of the day, I fear it will not help vulnerable workers, which is what I think Mr. Dhillon set out to do at the beginning.

Mr. Dhillon: With all due respect, I would have to disagree with that, because a lot of time and effort has been put into this, and the amendments that we put forth today would be very effective in curtailing the complaints that I and my colleagues, I'm sure, on this side and opposite—I think the amendments that we have here today go a long way to addressing the issues that were brought forward by the stakeholders.

Ms. DiNovo: I'd just like to ask the government side for an answer to that question: What is to prevent a temporary help agency from simply changing their name and evading every aspect of this bill; not calling themselves a temporary help agency, pure and simple?

The Chair: It's just the title of the act. It's not a reference to what they're calling themselves. Is that correct?

Ms. DiNovo: Yes, but you know the intent of my question. I think we're in agreement around this table that we would like to help vulnerable workers who work for temporary agencies and that we would like this act to do that job. In reality, all an employment agency needs to do is to call itself an employment agency to evade this act.

Mr. Dhillon: I'm not in agreement with that. I think we can make so many hypothetical scenarios, but the laws are what they are within the Ministry of Labour and the Employment Standards Act and what we have in front of us.

The Chair: The intent isn't to open a window for somebody not to have to comply with the act. Is that what you're saying?

Mr. Dhillon: Yes.

The Chair: Okay. We're going to call the question. All those in favour? Opposed?

Ms. DiNovo: Sorry, what are we voting on?

The Chair: We're voting on section 18, page 30. All those in favour? Opposed, if any? Carried.

Shall section 18, as amended, carry? Carried.

We're getting there.

The long title is a proposed government amendment, 31.

Mr. Dhillon: I move that the long title of the bill be struck out and the following substituted:

“An Act respecting temporary help agencies”

The Chair: Same points?

Ms. DiNovo: You've heard my concerns about that, and as I say, I think the concerns are very valid. I would love to hear from the government, as I've asked them, what their answer is for evasion just by simply changing the title of what it is that you do, but I haven't heard a satisfactory answer, so I'll vote against it.

Mr. Dhillon: When we're talking about the employment agencies, the placement agencies, like Kelly and Adecco, there's a contract between the prospective employee and, say, Kelly, and once a fee is paid, the recruiter is out of the picture. With a temp agency, it's a

continuous line of work. I think that's the difference: The temp agency is always in play with the client and the prospective employee.

We're satisfied that the amendments, as we've discussed this afternoon, are sufficient to address the concerns of the stakeholders.

The Chair: And you don't share Ms. DiNovo's concerns?

Mr. Dhillon: I do not.

Ms. DiNovo: Again, all an agency has to do is to make some permanent placements and call themselves an employment agency, even though 90% or 95% of their business is temporary help placement. They would get around all the restrictions and all of what I think are some pretty good recommendations in this act, so of course I'm going to vote against this.

The Chair: We'll call the question. All those in favour? Opposed? It's carried.

Shall the title of the bill, as amended, carry? Opposed? It's carried.

Shall Bill 161, as amended, carry? Carried.

Members of this august committee, shall I report on behalf of this committee this bill, as amended, to the House? Those in favour? Opposed, if any? The reporting was carried without dissenting votes, so we shall report it.

Members of the standing committee on the Legislative Assembly, I thank you for your patience and your good work. We stand adjourned.

The committee adjourned at 1740.

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