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**Official Report  
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**Tuesday 18 November 2008**

**Journal  
des débats  
(Hansard)**

**Mardi 18 novembre 2008**

**Standing Committee on  
Social Policy**

Workplace Safety  
and Insurance  
Amendment Act, 2008

**Comité permanent de  
la politique sociale**

Loi de 2008 modifiant la Loi  
sur la sécurité professionnelle  
et l'assurance contre  
les accidents du travail

Chair: Shafiq Qadri  
Clerk: Katch Koch

Président : Shafiq Qadri  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
SOCIAL POLICY**

**COMITÉ PERMANENT DE  
LA POLITIQUE SOCIALE**

Tuesday 18 November 2008

Mardi 18 novembre 2008

*The committee met at 1600 in committee room 1.*

**WORKPLACE SAFETY  
AND INSURANCE  
AMENDMENT ACT, 2008  
LOI DE 2008 MODIFIANT LA LOI  
SUR LA SÉCURITÉ PROFESSIONNELLE  
ET L'ASSURANCE CONTRE  
LES ACCIDENTS DU TRAVAIL**

Consideration of Bill 119, An Act to amend the Workplace Safety and Insurance Act, 1997 / Projet de loi 119, Loi modifiant la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

**The Chair (Mr. Shafiq Qaadri):** Colleagues, ladies and gentlemen, I'll call the meeting of the Standing Committee on Social Policy to order. I'll remind all concerned parties that we are time allocated and not permitted to exceed 6 p.m. today. We're here, as you know, to consider Bill 119, An Act to amend the Workplace Safety and Insurance Act.

**MUSKOKA BUILDERS' ASSOCIATION**

**The Chair (Mr. Shafiq Qaadri):** I would, with respect, invite our first presenters to please come forward—Ms. Jennifer Maloney, executive officer of the Muskoka Builders' Association. If there are any colleagues, please introduce yourselves.

Just to remind everyone for these proceedings, as you know, you'll have 20 minutes in which to make your presentation. That's the total time. If there's any time within that to distribute amongst the parties evenly for questions or comments, that will be happening as well. We would like you to please identify yourselves for the purposes of Hansard. Please begin now.

**Mr. David Nodwell:** Right. My name is David Nodwell. I'm the president of the Muskoka Builders' Association.

**Mr. Lawrence Cutting:** My name is Lawrence Cutting. I'm the chairman for the committee that's looking at Bill 119.

**Mr. David Nodwell:** On behalf of the Muskoka Builders' Association, we would like to thank the Standing Committee on Social Policy for the opportunity to speak here today. My name is Dave Nodwell. I'm presi-

dent of the Muskoka Builders' Association, and a small builder in Muskoka. This is Lawrence Cutting, a small construction-related business owner and chair of our association's WSIB action committee.

Our association represents 100 small businesses in the construction industry in Muskoka, about 90% of whom will be affected by this bill. We are an independent construction association comprising almost exclusively of small businesses. Having spoken to many small business owners, both in our association and outside of it, we know that many small business people are simply unaware of this bill, as such, and will not have the opportunity to contribute to this discussion. Therefore, we would like to speak for them and for all small construction businesses in Ontario.

As a group, we are disappointed, not only with the content of the bill, but also in the manner in which it is being rushed through today. We are also deeply concerned about the lack of specifics contained in the bill. As a group, we share your concern with the underground economy. It is a problem we deal with daily in the Muskoka area. Having studied this bill, however, we just see nothing in it that will do anything to alleviate this problem. The exemption for home renovators in the proposed bill leaves them with a place to hide, and the additional costs the bill imposes on owners and independent operators will do nothing but create more of an incentive for them to go deeper underground.

We feel that the inclusion of mandatory coverage for independent operators is a good one, although it should be clear that this is not the underground economy. These operators are already known to the WSIB and are simply being brought into the system. We feel this is appropriate as independent operators, by the very nature of the designation, are hands-on workers on job sites and therefore WSIB coverage, oversight and training will likely be beneficial.

With regard to the business owners and executive officers, however, we are strongly opposed to this extension of mandatory WSIB coverage. First, as business owners, we must be covered against accidents 24/7, not just in the workplace. WSIB coverage will not be enough for business owners. They will still be required to carry additional private insurance over and above the WSIB coverage that they will now be forced to pay for.

We know that a lot of numbers have been thrown around about how much it will cost businesses, but here are some small business numbers. Should this bill pass,

my company could pay an additional \$14,000 per year and, for Lawrence's company, the cost could be upwards of \$30,000 per year.

Like many small businesses, we co-own our companies with our spouses or family members, who actively work in running our businesses. This is how small businesses run, and how many small businesses in Ontario operate. Under this bill, each of the owners will be required to pay premiums. Obviously, this cost is not incidental to any small business. It will inevitably result in increased prices for our goods and services, and lost business and, ultimately, lost jobs for our workers.

Further, business owners and executive officers are already in the system. They serve an important administrative role in the process and administer the system for WSIB. Their inclusion will do nothing in terms of training and oversight.

We question when, if ever, an owner would actually make a claim under the WSIB system. We are all well aware that the claims increase our premiums. Are owners likely to make a claim that will increase their own company's premiums? Are they to file papers as both the injured and the employer? And how would these claims be viewed by WSIB? We suspect that they will be greeted with extensive investigation, as the potential for fraud here is obvious. So even if the owner were to make a claim, which we don't feel they would, it would likely be many months or even years before they ever saw any compensation, due to the claim scrutiny they are likely to receive.

We strongly urge the committee to exempt from mandatory WSIB coverage those owners and executive officers of companies already paying WSIB for their employees. Their inclusion does not address the underground economy issue, as they are not underground. It does nothing to improve health and safety on Ontario's job sites, as they are already under oversight of the WSIB and benefit from their training, policies and programs. The only reason to include this group is to increase the revenue of the WSIB, and we strongly believe that government shouldn't be trying to balance their books on the backs of small businesses in Ontario.

Finally, we question the three-year implementation period of this bill. We are at a loss to understand why this time would not be used, prior to passing any bill, to work with construction industry stakeholders to really understand the problems and the best way to deal with the underground economy, and to ensure worker safety and coverage.

As small business people who pride ourselves in doing business the right way, we are endlessly frustrated with both the Ministry of Labour and the WSIB, who have failed to enforce the rules that now exist to tackle the underground economy. Countless times, we have told them who they are and where to find them, and yet they continue to operate with impunity because the rules are not enforced or the initiative is not taken. Another bill is not the answer, and this bill in particular is not the answer, particularly when it comes with huge costs to the very companies that are already playing by the rules.

In closing, we urge the standing committee to delay passage of this bill and recommend province-wide consultations on this bill now, so that small businesses throughout the province are given a voice. With such huge cost implications at stake for thousands of small businesses, we feel the minister owes this community at least the opportunity for consultation.

We would be happy to answer any questions you may have for us.

**The Chair (Mr. Shafiq Qaadri):** Thank you, gentlemen. You've left a very generous amount of time, probably about four minutes per side, beginning with the PC caucus, Mr. Bailey.

**Mr. Robert Bailey:** Thank you, Mr. Chairman. Yes, I'd like to ask one question right at the get-go. In your opinion—and we can keep the answers short and I'll try to keep my questions short so we can ask more questions—why do you think this bill, in your opinion, won't help un-root the underground economy?

**Mr. Lawrence Cutting:** Can I—

**Mr. David Nodwell:** Yes. I'll let Lawrence answer.

**Mr. Lawrence Cutting:** I'll speak to a couple of specific conversations. I have a company that employs, under the envelope of Cutting Bros., about 45 to 55 employees. In the last three years, I've had specific conversations with subtrades that come in and want to work for me. The first question I ask them is—well, first of all, "How much?" We go through the bidding process and whatnot.

Then, after I award the contract, I ask, "Are you registered under the WSIB act?" Surprisingly enough, I've probably had three subtrades in the last couple of years say, "No, I'm not."

"Well how do you pay your men?" "I pay them as independent operators." "Well, do you get a clearance certificate from them?" Because I understand very well what is expected of us as employers for WSIB. They said, "No." I said, "Well, you've got two choices: I either take 10% of the contract that I've just awarded you and retain it to pay the WSIB, or you register under the WSIB act now and then give me a clearance certificate."

**1610**

The benefit of that is that instead of paying—let's say the rate is 10% in his field, and the contract is \$100,000; I'm going to take \$10,000 and I'm going to retain it and pay WSIB that money, which is my right as an employer. What I did is, I encouraged them to register, because now they can deduct their expenses from that contract, and they just pay on the wages that they pay their employees. Those three underground subtrades all of a sudden became above ground.

If I was to tell them, "Well, you know what? All your profits and what you pay your employees is now subject to WSIB premiums," you take away a carrot. You take away any incentive for them to register.

That's a real story, and that's what happens at our level. You have three subtrades that were underground, and all of a sudden, they're above ground. This bill, in

my opinion, in fact I can say with certainty, will further drive the underground even farther underground.

**Mr. Robert Bailey:** Thank you.

**Ms. Laurie Scott:** Thank you very much for appearing here today and coming down from Muskoka. I know that you're coming tomorrow for our opposition day, so we appreciate that also—

**The Chair (Mr. Shafiq Qadri):** You have about 40 seconds, Ms. Scott.

**Ms. Laurie Scott:** Okay. You stated very well what we say is going to happen to small business. You also stated that it's going to drive more businesses underground. Were you ever contacted, or your association consulted, by the Ministry of Labour before this bill came out?

**Mr. Lawrence Cutting:** No. In fact, we've heard blurbs of it down the road, but we had no idea that it was coming this fast, and we didn't know, we still don't know really, what the—for a better term—jiff is about this—

**The Chair (Mr. Shafiq Qadri):** Thank you, Ms. Scott. The floor is now Mr. Miller's.

**Mr. Paul Miller:** I agree with you totally that this was not sent around the province like it should have been. There should have been more consultation, especially with small business owners. I agree totally with that.

Where I disagree with you is about your comment about safety. I'm a former tradesman: two trades. In your companies, do you have a safety program?

**Mr. Lawrence Cutting:** Yes, we do.

**Mr. Paul Miller:** And do you meet once a month?

**Mr. Lawrence Cutting:** Yes, we do.

**Mr. Paul Miller:** And what are your guidelines? Are you guided under the WSIB programs, or what programs do you follow?

**Mr. Lawrence Cutting:** Well, the labour board sends us a booklet. Now, I'm not in charge of this aspect, and if I knew there was going to be a question on this, I would have brought my representative for it. I have a full-time staff that takes care of my safety protocol and safety meetings. I do attend them. At the meetings, we're required, rightly so, to have both management and workers.

**Mr. Paul Miller:** Okay. And my next question is this. I believe the other gentleman made a comment about private insurance for your companies, and you felt that this was a bad bill. Would it be safe to say, with private insurance companies, if you guys made a lot of claims—sometimes people won't come forward with their injuries because they don't want their premiums to go up; that has happened. Under WSIB, that wouldn't be a problem. If your guys don't come forward, it's going to keep your premiums and your payments to an insurance company down, and if I'm not mistaken, a private insurance company could refuse to insure you if you had too many claims and injuries. Is that not correct?

**Mr. Lawrence Cutting:** Yes.

**Mr. Paul Miller:** Okay. My next question is—

**Mr. Lawrence Cutting:** Can I add to that?

**Mr. Paul Miller:** Okay, sure.

**Mr. Lawrence Cutting:** I'm just saying, people at management level don't get up on the ladders; my employees get up on the ladders. I don't wear fall arrests.

**Mr. Paul Miller:** Some small companies—

**Mr. Lawrence Cutting:** I'm talking about my particular company and that's what I'm speaking to today.

**Mr. Paul Miller:** You have 45 employees, but a smaller outfit, most likely the guy will get up on the ladder.

**Mr. Lawrence Cutting:** Yes. It depends.

**Mr. Paul Miller:** I'm just thinking that you're right about some of your things and I think I'm right about some of this. I don't think it's been talked out enough and I agree totally with you that—

**Mr. Lawrence Cutting:** That's our point.

**Mr. Paul Miller:** I would have preferred more input, but it has been rushed through and this is the animal we're dealing with, so we have to deal with it. I think that there are a lot of problems with it, but when it boils down to it, 90,000 workers being insured by WSIB is a lot better than it has been for years. I've seen some real horror stories with small companies where they go into Stelco or Dofasco or other major companies and they don't have proper insurance and guys are injured, maimed and killed, without proper insurance. I can't speak for your companies, but I've seen a lot of it.

**Mr. Lawrence Cutting:** That's a great point: proper insurance. That's the key.

**Mr. Paul Miller:** That's right. Okay. Thank you, guys.

**The Chair (Mr. Shafiq Qadri):** Are you done, Mr. Miller?

**Mr. Paul Miller:** Yes.

**The Chair (Mr. Shafiq Qadri):** Thank you. To the government side.

**Mr. Vic Dhillon:** Thank you very much for appearing before this committee. You've indicated that you ensure that all your subcontractors have WSIB coverage. With Bill 119, the WSIB would be issuing a certificate. This would be an enhancement of the requirement to have coverage. Don't you think these enhanced requirements would ensure a level playing field, that everyone plays by the rules?

**Mr. Lawrence Cutting:** We do pay WSIB and every subtrade or employee who's on my job sites is covered by WSIB, so I don't understand where we're cutting corners for our level playing field.

**Mr. Vic Dhillon:** But the question is, with this requirement to have this certificate so that the people who engage these contractors and subcontractors—to put the onus out there that it's your responsibility that you have a certificate valid with the WSIB, just making sure—

**Mr. Lawrence Cutting:** Are you talking about the individual cards that they're trying to implement?

**Mr. Vic Dhillon:** Well, it would be somewhat like a certificate, some sort of a card or document issued by the WSIB.

**Mr. Lawrence Cutting:** Right now, if an employer is doing his job right, he is making sure that everybody on

site is insured. I know that there are a lot of sites where they're not, and I understand that. But to force owners in my situation and in small businesses where owners and executive officers of companies that never show up on the job site, except maybe for inspections—to have them covered under WSIB is just a huge conflict of interest.

Now, that being said, I understand you might have a company—this does warrant a lot of talk—of one employer and one employee, that one employer obviously has to get up on a ladder and swing a hammer, as MPP Paul Miller had said. So therefore, what you're getting is your ratio of administrator and worker offset so one person's exempt, even though he's working on site. I understand that. That's why we don't think that the independent operators should be allowed to exempt themselves from WSIB coverage—independent operators only, though.

**Mr. Vic Dhillon:** That leads to my second question. We have had instances where independent operators and executive officers have been seriously injured on the job site with no coverage to fall back on. I know as a family member, if I was a construction executive officer and had to visit a site and was seriously injured, that would definitely devastate my circumstances financially and family-wise. In the case that someone is hurt, an independent operator or an executive officer—if they happen to go the one time and they're not equipped and they do get hurt, don't you think it's a good idea that they should have coverage to fall back on?

1620

**Mr. Lawrence Cutting:** Absolutely. I completely, 100% agree with you, but they should retain the right to choose who insures them. If you want, make legislation that they have to be insured, but do not force them to be covered under the WSIB. The philosophy, for me—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Dhillon, and thank you, Mr. Nodwell and Mr. Cutting, for your representation on behalf of the Muskoka Builders' Association.

#### ONTARIO PIPE TRADES COUNCIL

**The Chair (Mr. Shafiq Qadri):** I would now invite our next presenter to please come forward: Mr. Alex Ahee, legal counsel of the Ontario Pipe Trades Council. Mr. Ahee, as you'll note, you'll have 20 minutes in which to make your combined presentation, and I would respectfully invite you to begin now and perhaps introduce yourselves as well.

**Mr. Alex Ahee:** Thank you, Chair, honourable members. I'm Alex Ahee of the Ontario Pipe Trades Council of the plumbers' and steamfitters' union of the United States and Canada, commonly known as the plumbers' union, but we go far beyond that. Our council is the bargaining agent for 16 local unions in the province of Ontario, and pursuant to the designation order received from the Ministry of Labour on April 12, 1978, we bargain on behalf of 16,000 members in every facet of the construction industry.

We all know why we're here today, so I will cut right to the chase. Bill 119 deals with two areas of interest to us, of course, one being construction work and the other being construction work in the renovation sector.

In the construction work section of the act, for many years the independent operator has been of concern to our council. Unscrupulous persons have used this as a loophole to label their employees as such, not only to avoid unionism, but to avoid paying WSIB premiums as well.

Bill 119 closes off one of those avenues used by them to gain a competitive advantage over fair contractors. In the past, as it is today, workers were being pressured by contractors to register themselves as employers, independent contractors or independent operators. They were not covered by any type of insurance unless they paid for optional insurance from WSIB or went to an outside source. In short, from where the council sits, the WSIB burden was carried by legitimate contractors who footed the bill, or the medical aid costs were shifted to the health care system without being handled by the WSIB, and, as well, with no incentives in place for accident prevention and health and safety in the workplace. I will deal with that later on.

This new legislation, the council believes, goes a long way to preventing unscrupulous employers from forcing employees to work on construction without insurance coverage or not work at all.

Under the new regime's regulations, employers in the construction industry must provide the WSIB with detailed information about their workers. The new regs require each and every worker in construction to have an approved identification card available for inspection when at work. Of course, we are in favour of that.

This government has recently caused the hiring of approximately 200 more enforcement officers under the Trades Qualification and Apprenticeship Act, the TQAA, and we commend you for that. Those officers police job sites and enforce regulations, and hopefully in future will include health and safety as one of their mandates. This is but one more test that those inspectors can use to check employers who have been taking advantage of the system, exploiting the youth of this province with no concern for their health and safety and, for that matter, no concern for their future. Young people working in the underground economy and suffering serious injuries become a burden and a cost on all of us. This legislation, we feel, is but one more step in the right direction. Unscrupulous contractors can no longer use this method to hide their employees behind a corporate veil, using it as a charade to avoid their WSIB premium obligations.

In light of the current economic situation about to descend on us, Bill 119 is indeed very timely. Therefore, the Ontario Pipe Trades Council supports and endorses the extended WSIB premium coverage for all independent contractors and corporate executive officers in construction.

Now, with respect to home renovations, the council feels that the exemption granted to the home renovation sector is too broad. This sector is driven by the subtrades,

especially the mechanical subtrades, of which we are a large part. We represent the plumbers and also the gas fitters. Major home renovations in the GTA area, for one example, almost always involve an upgrade of the plumbing, air conditioning and heating systems.

In the city of Toronto, we have two natural gas distribution companies, Enbridge and Direct Energy. These companies, for the most part, subcontract their renovation work on the west side of Yonge Street to Nekison Mechanical and Lakeside Mechanical—just two examples we're pulling out of our hat. On the east side of Yonge Street, the work usually goes to a company called Double 'G' Gas Services.

The large explosion four years ago on Burnhamthorpe Road west of Kipling was a Lakeside project. It is still under investigation and involved great loss of life, with many injuries and, no doubt, continuing litigation.

On the east side of Toronto, just last year, a Double 'G' Gas Services mechanic was working on the Moore Park home renovation. The enclosed newspaper article with photographs—it's in your package—shows the extent of the damage caused and the serious injuries caused to the gas fitter doing the renovation and indeed the homeowner.

That company, Double 'G' Gas Services—as late as last night, we did a survey through our organizers out in the field; we have a dozen people on the ground around the GTA. As of last night, Double 'G' Gas Services has at present over 100 men on the road, and they're all subcontractors or independent contractors, and are responsible for their own insurance.

At present, Nekison Mechanical has over 40 men on the road, and they are all subcontractors or independent operators.

Presently, these so-called "tradespeople" are under no obligation to show that they're self-insured. There is no requirement of them to show proof of status. Obviously, production of WSIB documentation in those cases would help screen these people.

The independent-contractor loophole, therefore, we believe, is alive and well in the home renovating sector. From our experience, these independent operators bounce around from company to company as much as four, five or six times a year and are very hard to police.

Yesterday, Mr. Ron Johnson, deputy director of the Ontario systems contractors association, said that the small legitimate contractors in the renovation sector are in favour of WSIB coverage so that they could have a level playing field with those contractors operating in and feeding the underground economy. We could not agree more.

The council feels that WSIB inspectors, if they were put on the renovation sites, would go a long way to reducing workplace injuries in the home renovation field and preventing needless litigation.

These are our submissions. If I can answer any questions, I'll try my best. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you very much. Again, a very generous amount of time left for

questions. We'll begin with Mr. Miller of the NDP—about four minutes a side.

**Mr. Paul Miller:** In reference to health and safety, is it your opinion that under your system—you obviously have training facilities and you guys are all certified plumbers and gas fitters. Do you run a program before the guys go out in the field, before they're exposed to potential disasters or areas where they could get themselves in trouble?

**Mr. Alex Ahee:** Oh yes, all the time, in our trade schools. Health and safety is a very large component.

**Mr. Paul Miller:** And do you have field representatives that actually go to the job sites? Do you have a steward or a safety guy who's in charge of safety on the job?

**Mr. Alex Ahee:** Usually the steward has a mandate for that project.

**Mr. Paul Miller:** So he's properly trained—level 1, level 2 safety and health?

**Mr. Alex Ahee:** Yes, sir.

**Mr. Paul Miller:** So that's a mandatory situation on certified job sites?

**Mr. Alex Ahee:** I think, on certified job sites, that is always the case.

**Mr. Paul Miller:** Okay. In your opinion, do you think that with the amount of work out there, that this situation would cause job losses for the small operator?

**Mr. Alex Ahee:** I don't think so. I think that, if anything, it would help level the playing field between those operators. If anything, they would have more opportunities in the workplace.

**Mr. Paul Miller:** Do you feel that your organization—do they feel that their dealings with the WSIB and the workers' coverage and benefits are sufficient? For example, you would probably be able to access the Safety Association of Ontario's Work Health and Safety Centres; you'd have exposure to that. You would have an extensive Health and Safety Network through the WSIB for your injured workers—would that be correct?

1630

**Mr. Alex Ahee:** Well, I've been involved as a member for over 40 years, and I've never heard any complaints.

**Mr. Paul Miller:** And do you feel that an independent operator, if they were insured by a small insurance company, may run into some difficulty with health coverage?

**Mr. Alex Lolua:** Part of the problem with the private insurance that a contractor gets is that if an injury occurs, there is not necessarily an accident investigation that would take place by MOL or the CSAO—the Construction Safety Association—because the claim would go directly to the private insurer. So, if it's a unique situation that may not have happened previously, that information may not through the Health and Safety Network in Ontario, thus leaving a greater chance that the accident could repeat itself. Part of the problem with the private safety network is that critical information doesn't get through the Health and Safety Network in the

construction industry because there is no obligation to report accidents.

**Mr. Paul Miller:** Also, would it be safe to say that the insurance adjudicator may not be trained in recognizing the pitfalls on a work site that some of the people through WSIB would?

**Mr. Alex Lolua:** Exactly. There's no need to report it, so it just stays between the independent operator that was injured and the private insurance company.

**Mr. Paul Miller:** Thank you.

**The Chair (Mr. Shafiq Qadri):** To the government side.

Sorry, gentleman, just before we go on, do you mind just introducing yourselves once again for Hansard?

**Mr. Alex Lolua:** Alex Lolua. I'm the director of government relations for the Provincial Building and Construction Trades Council of Ontario.

**Mr. Vic Dhillon:** Thank you very much for appearing before the committee. I think Mr. Lolua has made a very important point, where the WSIB should be mandated in the way that this bill intends, and has indicated a very key difference between private insurance and the WSIB, where a certain system is followed.

My question is, can you explain why it's important for the executive officers to be covered under the WSIB?

**Mr. Alex Ahee:** Well, from my experience and from the experience of our people in the field, on the ground, the only way to catch those cheaters—I hate to use that word, but that's the word that describes them best—is by throwing a full blanket net over the corporate structure. This is to prevent in the future, for example—and I know it's not a very difficult thing to do—adding more and more executive officers on your corporate documentation so as to avoid the WSIB premium program.

Unfortunately, some of the legitimate small contractors may well get caught in that net. But at the end of the day, I think we're looking for the greatest happiness for the greatest number, and it will work itself through in the system.

**Mr. Vic Dhillon:** Can you also tell us how long your organization has been involved in discussions around mandatory coverage? Do you think it's fair, that there have been enough discussions and debates on this issue?

**Mr. Alex Ahee:** I didn't hear the second part of your question, sir.

**Mr. Vic Dhillon:** Do you think that it's fair to say that there has been enough discussion and debate about this issue?

**Mr. Alex Ahee:** Well, we have been in many respects crying wolf about this for at least 15 years, and from where we sit, we're a bit saddened that the implementation is going to take so long. We wish it would happen sooner; indeed, the sooner the better.

**The Chair (Mr. Shafiq Qadri):** Thanks very much, Mr. Dhillon. To the PC side.

**Mr. Peter Shurman:** Gentlemen, are you aware of how much money your organization donated to Working Families and the Liberal Party of Ontario?

**Mr. Alex Lolua:** I'm not sure of the amount, sir, but I don't think it's anything near what the corporate community gave to the Tory party from 1995 forward to devastate labour legislation, the apprenticeship act, and other things.

**Mr. Peter Shurman:** Let me refresh your memories: The Ontario Pipe Trades Council donated \$400,000 to Working Families in 2007 and also \$20,640.26 in direct donations to the Liberal Party of Ontario in 2007. My question is, was this bill promised in return for this very generous support?

**Mr. Alex Lolua:** It's a shame that a gentleman like yourself would try to make political hay on a very, very important issue.

**Mr. Peter Shurman:** I didn't ask you that. Please answer the question.

**Mr. Alex Lolua:** I'm sorry, I'm answering the question. It's an embarrassment to everybody here that you would try to make light of a very important issue that many, many construction industry partners have worked a long time on to help make our industry better, make it safer and level the playing field for all involved.

**Mr. Peter Shurman:** It's an embarrassment to your union that you would come here and you would describe non-apprenticed-through-the-union labour as being "so-called." That was what you just said. So you embarrass yourself when you come here and you do that, and you also embarrass yourself when you come here—

**Mr. Alex Ahee:** Just a minute. I must take exception to that, because in fact that's terminology used at the labour board, because they're uncertified tradesmen.

**Mr. Peter Shurman:** Nobody says that you have to fall in line. You came here to make the deputation.

**The Chair (Mr. Shafiq Qadri):** I would just remind everyone that this is a committee before the Legislature of Ontario. Please proceed.

**Mr. Peter Shurman:** Then I'll ask a direct question and I'll expect a direct answer. You talk about "unscrupulous" contractors. You used that word. Are small construction businesses necessarily unscrupulous? That seems to be the conclusion.

**Mr. Alex Ahee:** I don't know them all, but the ones that I've dealt with, I find from time to time at the labour board, find any way they can to cut corners. Unfortunately, for workers—that's who I represent—health and safety is not a priority for many contractors.

**Mr. Peter Shurman:** We've had deputations in here from small business contractors who are paying all of the dues that are expected of them and eking out a living, basically. A fellow who was here yesterday and his wife work 60 hours a week and they make \$60,000 to \$80,000 out of their business, and this would put them under. So the suggestion that there is something unscrupulous and what you just said about a guy like that—I find that shameful.

**Mr. Alex Ahee:** I'm not talking about that particular contractor; I'm talking about those contractors who cut corners to avoid paying taxes, cut corners to avoid health

and safety. In fact, that good small contractor would welcome a level playing field.

**Mr. Peter Shurman:** Is there a problem with a small contractor, in your estimation, insuring everybody in the company in an appropriate way on his own without the WSIB, or are you here saying that only the WSIB can do this?

**Mr. Alex Lolua:** We talked about the pitfalls of that earlier. The problem with a private insurance company in the construction workplace is that if an accident happens, it doesn't get reported to the Health and Safety Network, thereby leaving out important statistics on how people get injured.

**Mr. Peter Shurman:** There's another side to that equation, though. The other side to the equation is it doesn't cover 24/7 the people who work for the construction company, whereas some of the insurance plans that have been related to me by people who are in small business and doing it properly are 24/7, they include a health component—they're good plans. What's wrong with having a certificate or a named insurer, if you will, other than WSIB, which, by the way, has been described by many people as the only monopolistic insurance company that doesn't make a profit?

**Mr. Alex Lolua:** We would have no problem with mandatory coverage for everybody who works in the industry. That is what this bill is about. It's to ensure that everybody who works in the industry is—

**The Chair (Mr. Shafiq Qadri):** Thank you for your presentation on behalf of the Ontario Pipe Trades Council. I would now bring that spirited exchange to a close.

PROVINCIAL BUILDING  
AND CONSTRUCTION TRADES COUNCIL  
OF ONTARIO

**The Chair (Mr. Shafiq Qadri):** I would now invite our next presenters, Mr. Nicholls and Alex Lolua of the Provincial Building and Construction Trades Council of Ontario.

I do have before me, by the way, a very extensive list of parliamentary decorum which I'm happy to inflict on the committee if necessary, but once again I just remind them to observe parliamentary procedure and decorum.

Gentlemen, I invite you to begin now.

**Mr. Bill Nicholls:** Good afternoon. My name is Bill Nicholls. I'm president of the Provincial Building and Construction Trades Council of Ontario. With me this afternoon is Alex Lolua, who is the government relations director. I want to take this opportunity to thank you for giving us this chance to bring forward our position on Bill 119.

The Provincial Building and Construction Trades Council of Ontario is the umbrella organization that represents construction workers in all aspects of the industry in this province.

The Workplace Safety and Insurance Amendment Act introduces changes as to who must now be covered by

Workplace Safety and Insurance Board premiums. Bill 119 proposes that both independent operators and executive officers of construction firms will no longer be allowed exemptions from premiums and that the only exemption will be for a class of workers in the home renovation field.

**1640**

For more than 15 years, this council, along with several other construction industry groups, has been making representation to governments of all political stripes to address the independent operator exemption from paying Workplace Safety and Insurance Board premiums. The most recent written submission from the Ontario building trades was in June 2006 to then-labour minister Steve Peters. A copy of that submission is enclosed with the submission we've given to you today.

The tabling of Bill 119 is the result of wide industry consensus on the principle of mandatory WSIB coverage for the construction industry. As stated, the independent operator has been an issue of concern for quite some time in the construction industry. The Ontario Construction Secretariat has commissioned several reports dealing with the underground economy in the construction industry. In its most recent report on the underground economy, the OCS noted that almost one third—32.7%—of construction workers in 2006 reported that they were self-employed, whereas the economy as a whole reported less than 15% as self-employed. The number of self-employed construction workers in 1987 was reported by Statistics Canada as only 10.8%. Over the 20-year period there was a 200% growth in the number of independent operators in the construction industry.

This significant difference in the proportion of self-employed workers between construction and the economy at large and the explosive growth of the number of independent operators is indicative of a restructuring of the construction industry for many to capitalize on this classification in order to gain a competitive advantage on others in the same industry.

The Building and Construction Trades Council of Ontario strongly agrees with the conclusion of the OCS "that the practice of styling workers as independent operators was supported and encouraged by the decision to continue the statutory exemption of independent operators from WSIB coverage at a time when the WSIB increased its premiums to cover unfunded liabilities." In essence, the nature of the work relationship was structured to take advantage of significant cost savings despite the fact that the nature of the relationship was in name only.

Allowing some to take advantage of this restructured relationship is unfair to legitimate contractors who accept their legal obligations and support the WSIB system. Bill 119 is a positive step in levelling the playing field so that all who compete for work do so on more equal terms.

Beyond the issue of the restructuring of the work relationship, some unscrupulous contractors have forced workers to accept being declared independent operators in order to gain employment in the construction industry.

This is being done for no reason other than to allow a contractor to avoid their statutory obligation to forward WSIB premiums on behalf of a worker and to pocket the savings for themselves. This violates the basic premise of the workers' compensation system and leaves workers with the choice of working without coverage or not having a job. No worker should be put in such a position.

In 2004, a committee that came to be known as JAIG—Joint Advisory Implementation Group—and consisted of various participants from labour and management across the construction industry came to a consensus position that the independent operator exemption should be eliminated. A copy of the JAIG report is included in this submission.

The proposed legislation could also be an important step in improving safety within the construction industry, therefore assisting the Workplace Safety and Insurance Board in its Road to Zero mandate. The goal of Road to Zero is to achieve no lost-time injury and no traumatic incidents in the workplace. By requiring all independent operators to register with the WSIB for coverage, this will put all independent contractors in contact with the board and by extension with the Construction Safety Association of Ontario. This will allow for more safety training of individuals who work in the construction industry, which should result in fewer lost-time injury claims and preventable occurrences.

For the above-noted reasons, the Ontario building trades council strongly supports the undertaking of Bill 119 to eliminate the independent operator exemption from paying WSIB premiums in the construction industry.

Bill 119 also proposes to include all executive officers who work in the construction industry in the WSIB regime. The council believes this is a prudent course of action on two accounts.

First, based on the previous discussion on independent operators, the council believes that any exemption for executive officers would undoubtedly result in an explosive growth in this class of worker. As many have used the independent operator exemption to avoid paying WSIB premiums, many would find ways to incorporate an executive officer exemption into their arrangement of work practices.

Secondly, if one truly believes in the concept of full coverage, then it is a logical conclusion that no one should be given an exemption, including this class of worker. Thus, full coverage is an issue of fairness and consistency of application. As a result, the council is in full support of WSIB coverage for all executive officers who work in the construction industry.

One of the critical matters contained in Bill 119 is the home renovator. The council has grave concerns that this exemption, if not severely restricted or, better yet, removed from the legislation, could become the new independent operator problem. Our concerns are two-fold:

(1) As was clearly demonstrated in the case of the independent operator, certain factions within the construction industry will find a way to use the home renovator

exemption for unintended purposes. Unscrupulous contractors will try to devise some way to gain a competitive advantage by misusing the exemption, leaving the industry with the same problem it has now but with a different name.

(2) The proposed legislation leaves the homeowner susceptible to legal liability in the event that the home renovator injures himself or herself while performing their work. It is our belief that the current subsection 26(2) of the act could allow this scenario to occur. It seems incongruent with the premise of workers' compensation that legislation could allow such an event to occur.

For these reasons, the council recommends that the legislation remove all exemptions from WSIB coverage. Failing that, the council recommends that the definition of home renovator be more restrictive to ensure that it is not abused.

The founding principle of our workers' compensation system is that workers give up the right to sue employers for work-related injuries and deaths in return for a no-fault system of benefits. As a result, this legislation must clarify who has the responsibility to pay the WSIB premiums. If this responsibility is not clearly laid out, many workers will find themselves in a position where they are forced to pay their own premiums in order to get work in the construction industry. We would suggest that the person or entity engaging a worker should be responsible for paying any and all WSIB premiums.

Legislation can only be effective if there is a corresponding will of government to enforce laws it has passed. The current abuses we find today in the construction industry are the result of poorly crafted legislation and a seeming unwillingness to enforce the laws that are on the books.

Recent history in the greater Ottawa area has demonstrated the positive impacts government can achieve in addressing the underground economy. Through the efforts of the jobs protection office, both the federal and provincial governments have found significant amounts of revenue leakage by seeking out those who do not play by the rules. The Ministry of Labour and the Workplace Safety and Insurance Board have important roles to play to ensure that workplaces are safe and that all contractors and workers compete on a level playing field for contracts.

This council commits to work with government and our industry partners to ensure that we achieve these goals. Thank you very much for your time.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Nicholls. We have a couple of minutes or so per side, beginning with the government. Mr. Dhillon.

**Mr. Vic Dhillon:** Thank you very much for your presentation this afternoon. Some advocates believe that we should be pursuing named insured instead of the mandatory coverage. Can you comment on this suggestion?

**Mr. Alex Lolua:** We don't care what it's called; we just want to make sure that everybody that works in the construction industry is covered. Sometimes, what you will find is—and where the named-insured concept came

from—even sometimes with people who are registered with the WSIB, they may have 20 employees in their employ at a certain time, but only pay premiums for 10. Part of the debate or discussion that occurred even with JAIG was to ensure that we come up with a system whereby everybody's covered and everybody becomes legitimate and pays their fair share. We don't care what it's called; we just want to make sure that everybody who works in the industry is covered.

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**Mr. Vic Dhillon:** How long has your organization been contemplating mandatory coverage, and do you feel that enough debate and discussion has gone on about mandatory coverage?

**Mr. Bill Nicholls:** I personally feel it's been going on for at least 15 years, if not longer. This has been an issue that's been out there for numerous, numerous years, especially in the finishing trades. Is there ever a bad time to put through legislation like this? To me, it makes sense. It's positive, it makes a level playing field, and it's the right thing to do.

**Mr. Alex Lolua:** I think if you look in the back of our submission, in the JAIG report, it has a list of all the significant players in the construction industry that have discussed this issue. I started with the council in 1993 and it was one of the first issues that I ever worked on.

**Mr. Vic Dhillon:** Thank you very much.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Dhillon. Mr. Bailey.

**Mr. Robert Bailey:** Thank you, Mr. Nicholls and Mr. Lolua, for coming in today. I had a question. You talked about mandatory coverage. If we had a choice in that independent operators, chief executive officers etc., were given the opportunity to have comprehensive but equal coverage to the WSIB to meet their needs, this 24/7 coverage for off-hours, would you be supportive of something like that? Like I say, something that's at least as good as, or better than, the WSIB: Would you be willing to support something like that?

**Mr. Alex Lolua:** The problem gets back to the reporting mechanism, right? If everybody is registered with the WSIB, the WSIB has a way to communicate with everybody in the industry. Again, it gets back to tracking injuries. If something happens that's a first-time occurrence or if a pattern develops with a certain class of employers—because normally we're talking about small employers, but not necessarily. It can happen that the independent-operator rule is also abused in larger jobs. But if a pattern develops in a smaller contractor, those things don't get reported to the Health and Safety Network if you're dealing directly with your private insurer, and that's one of the major pitfalls with that type of regime.

**Mr. Robert Bailey:** Okay.

**The Chair (Mr. Shafiq Qadri):** Ms. Scott.

**Ms. Laurie Scott:** Thank you very much. My question is, the president of the Provincial Building and Construction Trades Council, Pat Dillon—

**Mr. Alex Lolua:** Business manager; wrong title.

**Ms. Laurie Scott:** What is it?

**Mr. Alex Lolua:** Business manager. Mr. Nicholls is our president.

**Ms. Laurie Scott:** So was Pat Dillon the head of the Working Families Coalition?

**Mr. Alex Lolua:** You'd have to ask Mr. Dillon. He's not here. I know he took part in it, but I don't think he would be classified as the head of Working Families. I don't see what that has to do with the issue at hand.

**Ms. Laurie Scott:** It's similar to some of the questions we had before. This is an all-party committee, and we have information from Elections Ontario. We certainly know that the provincial building trades council made a donation of over \$26,000 to the Liberal Party of Canada in the run-up to the last election: a connection with the Working Families Coalition. Would you say that this bill is not the work or the demand of the Working Families Coalition?

**Mr. Alex Lolua:** I think if you look in the back of your document that we handed to you, if you look at the JAIG report—

**Ms. Laurie Scott:** Just yes or no.

**Mr. Alex Lolua:** Excuse me. I see a lot more names there than the Ontario building trades council.

**Ms. Laurie Scott:** I'm just asking for them.

**Mr. Alex Lolua:** So I would say that this issue, in principle, has very broad support within the construction industry.

**Ms. Laurie Scott:** I'm just asking for your association.

**Mr. Alex Lolua:** Certainly, I would think that the government is reacting to broad industry support on the principle of mandatory coverage for everybody that works in the construction industry.

**Ms. Laurie Scott:** Okay. I asked you because you're representing the Provincial Building and Construction Trades Council of Ontario. So was the answer yes or no? Was that the big demand of your association? Is this bill a result of that?

**Mr. Bill Nicholls:** I can answer that. It was not a big demand of our association.

**The Chair (Mr. Shafiq Qadri):** I'll have to intervene, Ms. Scott. To Mr. Miller, please.

**Mr. Paul Miller:** Thank you very much. Thanks, gentlemen.

A couple of quick questions—actually, I have a statement here. The information that's coming to me says: "The current practice shows that unscrupulous contractors, to the detriment of the entire industry, will exploit any exemption in order to preserve the integrity of the system and to avoid any abuse. All who work in the construction industry must be covered equally." Would you concur with this statement?

**Mr. Bill Nicholls:** Yes, I would concur with that.

**Mr. Alex Lolua:** Absolutely.

**Mr. Paul Miller:** Okay. My next question: The two biggest arguments we're getting—and I'm having difficulty with it; I don't quite agree with it—are that this legislation is an attack on small businesses for the benefit

of big businesses and unions. How do you feel about that?

**Mr. Alex Lolua:** Health and safety is everybody's business. There's no reason why any person should leave their home in the morning, go to work, and not come back to their wife and kids. We think that health and safety is a big component of it; we think that equity and levelling the playing field is a big component. I can't see how you can make an argument that someone has been avoiding their due obligation for years and years and now that we're going to take an opportunity to change something that we think is unfair—to say that that's a burden—

**Mr. Paul Miller:** Would it be safe to say that in your 15 years of pursuing this, this statement could have been said every time and it doesn't hold any weight. Would that be a fair statement?

**Mr. Alex Lolua:** Absolutely.

**Mr. Paul Miller:** The last statement that some detractors are using is that it's just a cash grab by the government. How do you respond to that?

**Mr. Alex Lolua:** I would look anybody in the eye and say that any time you can do something to make workplaces safer, you're taking a step forward. I would say, as someone who believes in free enterprise, that the more you can do to level the playing field so everybody can share equally in the prize is a good step. So I think on those accounts this is a great piece of legislation. It's not perfect. Certainly, we have some concerns. We don't want the home renovator exemption to become the new independent operator exemption. But to finally get close to something that a broad spectrum of our industry has been asking for for years—I think it speaks well. It's very encouraging having your party support the government on this, because I know how difficult it can be to support the opposite side.

**Mr. Paul Miller:** Thank you for making that statement. I'm waiting for them to support me on one of them. It would be nice.

**Mr. Alex Lolua:** It's something that needs to be recognized. Normally, in government you don't see a lot of co-operative efforts—I watch TVO quite a bit—but it's important. I'd like to congratulate Mr. Miller for seeing the importance of the principle and saying, "Yes, we're prepared to support"—

**Mr. Paul Miller:** Thank you, gentlemen.

**The Chair (Mr. Shafiq Qadri):** Thank you for your deputation on behalf of the Provincial Building and Construction Trades Council of Ontario.

#### MECHANICAL CONTRACTORS ASSOCIATION OF ONTARIO

**The Chair (Mr. Shafiq Qadri):** We'll now proceed directly to our next presenters, Mr. Coleman, Mr. Capotosto and Mr. Liversidge of the Mechanical Contractors Association of Ontario. I would invite you to begin now.

**Mr. Les Liversidge:** My name is Les Liversidge. I'm here today representing the Mechanical Contractors

Association of Ontario. Joining me on my right is Mr. Don Capotosto, president of Gimco Ltd., a member of the board of directors of the MCAO; along with, on my left, Mr. Steve Coleman, MCAO's executive vice-president.

The MCAO is a major provincial construction employer association that represents some 360 member firms involved in the industrial, commercial and institutional sector of Ontario's construction industry, that in turn directly employs approximately 12,000 construction tradespersons across the province. MCAO members submit Workplace Safety Insurance Board premiums under two rate groups in excess of \$35 million per year. The MCAO is a long-time member of the Council of Ontario Construction Associations, which appeared before this committee yesterday, and the MCAO generally supports and adopts the COCA presentation.

For the reasons set out in the COCA presentation, the idea of universal mandatory insurance coverage for the construction sector for at-risk individuals is an appropriate social and policy objective. While a review of the WSIB monopoly for on-the-job insurance protection is arguably worthy of a debate, the MCAO supports the principle of mandatory universal insurance coverage and, for the moment, accepts that the Ontario WSIB is the best vehicle through which to deliver that objective. The broader debate, though, would be welcomed at a future point.

That said, the MCAO does not support the inclusion of executive officers not exposed to construction work site risks. Such an inclusion does little to promote the touted policy expectations of Bill 119: to promote coverage for at-risk construction workers and to fight the underground economy. Legitimate executive officers are neither at risk nor are they part of the underground economy.

Sole proprietorships, partnerships and incorporation are legitimate and legal means of business organization. Legitimate independent operators are unique in that they may organize as a sole proprietorship or a corporation. Of course, once a worker is hired, the enterprise becomes an employer.

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Bill 119 is sensitive to several similar but distinct policy concerns.

(1) Some individuals who are workers, in fact and law, masquerade as independent operators until injured on the job. This represents the quintessential revenue leakage problem.

(2) Legitimate independent operators who have not opted for voluntary WSIB coverage are exposed daily to construction site risks and are either not insured or are underinsured.

(3) Similarly, owners—a sole proprietor, a partner or a legitimate executive officer—of small construction firms properly registered and in good standing with the WSIB are exposed daily to construction site risks and are either not insured or are underinsured.

(4) A significant minority of companies engaged in the Ontario construction industry run underground. They hire

workers, but neither register with the WSIB nor pay premiums.

That seems to capture what Bill 119 is at least trying to deliver on.

While the MCAO supports the principle of full coverage for those exposed to construction work-site risks and lauds the efforts of the government to tackle the underground economy, there is no policy reason to extend mandatory coverage to executive officers not exposed to construction work-site hazards.

For our 360 members, this provision will increase our overall premiums by as much as 10% to 11%, with no corresponding increase in our insurance risk. Worse, the impact will be disproportionate, weighing more heavily on the small and medium-sized enterprises.

Consider these two simple illustrations. First, a very large constructor, with a \$25-million payroll and four executive officers: That company will pay approximately \$1.6 million in premiums to the WSIB and will see their premiums increase by \$18,500 as a result of Bill 119. The mandatory executive officer coverage will increase the aggregate premium of that large enterprise by approximately 1%. Contrast that with a smaller corporation with a \$1-million payroll and 18 employees, paying \$67,000 in WSIB premiums. If that company had two executive officers, which is likely, that would increase the aggregate premium of that company by \$9,294, which would increase the overall Workplace Safety and Insurance Board premium by 14%, even though the WSIB insurance risk remains essentially the same.

A preferred solution for executive officers not exposed to construction risk is to leave the coverage optional. However, as introduced and suggested by COCA yesterday, if the government is steadfast in its resolve to compel mandatory coverage for all executive officers, at risk or not, then we urge that these individuals be assigned a premium that is commensurate with the risk they represent.

I want to turn to the issue of addressing the underground economy.

As was also expressed by COCA, the MCAO supports Bill 119's reliance on a new system to verify insurance coverage, even though the mechanics of that new system are not spelled out and supporters are asked to take this somewhat on faith. Without such a mechanism, the inclusion of independent operators and others as "deemed workers" will do little or nothing to solve the systemic problem of the underground economy.

The complexities associated with this proposal—and this proposal is the verification system—are understood. While a verification mechanism is easily implemented with respect to independent operators and at-risk owner coverage, since they are directly responsible for paying their premiums and could easily be directly responsible for presenting proof of those premiums paid, it is not so easily developed for normal construction workers.

Through COCA, the MCAO commits to work with the WSIB and the rest of the industry to develop a workable system. However, without a workable verification mech-

anism, the WSIB will be ill-equipped to tackle the underground economy, and this essential objective will be thwarted.

I want to talk about a component which has been touched on by a few other presentations, as I heard them today. I'll call them the "moral hazard" considerations that this new bill brings forth.

Wage replacement insurance coverage for self-employed individuals has been the subject of extensive discussion at the federal level, with respect to inclusion in the employment insurance regime. A general reticence has emerged because of the difficulties associated with containing the "moral hazard" of self-employed individuals. Such a problem will now present itself in the Ontario workplace safety and insurance scheme. It will be difficult to distinguish between long-term unemployment due to disability through on-the-job injury and long-term unemployment through loss of business opportunity.

If, as the government projects, Bill 119 will result in 90,000 new workers being insured by the WSIB, it can be expected that this will also result in 1,800 new lost-time-injury claims being accepted by the board if only average trends present themselves, with a new annual benefit cost of \$122 million each and every year. The moral hazard implications are stark and must be managed. As part of the Bill 119 implementation process, the WSIB must develop a viable strategy to manage the insurance moral hazard for self-employed persons.

There's another problem, and this has been introduced as well. This is the question of double insurance. Workplace safety and insurance coverage is limited in scope. It is limited to injuries which occur in the course of employment. Self-employed individuals require a broader scope of insurance coverage and normally acquire and require 24/7 accident and disability insurance. Independent operators and owners will still require 24/7 insurance coverage, plus now WSIB coverage, yet lack sufficient bargaining power to negotiate lower 24/7 premiums, even though the private insurance claims usage will decline significantly. As an adjunct to Bill 119, the Ontario government should spearhead an immediate dialogue with the Ontario insurance sector to request a premium offset in these circumstances and present those assurances and guarantees to the industry.

In closing, with the qualifications and suggestions set out today, the MCAO supports the government's decision to introduce mandatory workplace safety and insurance coverage for the construction industry. Through COCA, the MCAO will continue to work with the government and the board to advance our mutual interests.

I think there's time for a few questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Liversidge. We'll have some time for questions. We have a couple of minutes per side. Mr. Bailey.

**Mr. Robert Bailey:** Yes, thank you, Mr. Liversidge, Mr. Coleman and Mr. Capotosto, for coming today.

I had a question. Mr. Liversidge, you touched on the people with dual insurance. People have spoken to me

about this and said that some of them are locked in to 20-year insurance plans, that they'll either have to take a big penalty or keep paying that or have both insurances. I like your idea there that the government and us, if this does pass, either have an amendment or something so that there's some form—maybe the other two gentlemen here would like to speak to that. Because some people would be in that position, right?

**Mr. Les Liversidge:** Yes, I'd like to touch on that. You open the door to several points and several questions.

The first one is the issue of double insurance. It's wasteful. It's not a sound use of resources to double insure the same risk. It makes no sense. But it would seem to me that it would be incumbent upon the government—being the cause of the now double insurance issue, and since insurance is a provincially regulated function, they are in a better position to spearhead a strong dialogue with the insurance industry to ensure that a fairer premium mechanism exists for those who do find themselves locked into that issue. So that's something that they can do outside the workers' comp issue.

But there's a second consideration that I think is worthy of exploration as well. That's whether or not the insurance for independent operators and at-risk/exposed owners and executive officers—remember that we oppose the inclusion of coverage for those who are not at-risk/exposed—whether or not those individual, in actuality, have the same insurance risk as normal construction workers. Intuitively, you would think otherwise. Intuitively, you would think that independent operators, even at-risk owners and executive officers, would more likely than not have a lower overall risk. At 90,000—and that's just independent operators; if you include the at-risk executive officers, you're probably well over 100,000, maybe a 120,000 pool of risk—that's enough to float its own separate and distinct risk pool and it should attract its own premium based upon its actual demonstrated risk. The WSIB at this very point in time, based upon its exposure and its ability to accumulate its own data, should be able to determine right now whether or not independent operators—

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**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Bailey. Mr. Miller.

**Mr. Les Liversidge:** —and at risk—

**The Chair (Mr. Shafiq Qadri):** Thanks.

**Mr. Les Liversidge:** —have the same overall insurance risk.

**Mr. Paul Miller:** I think you just got cut off.

**Mr. Les Liversidge:** I kept talking.

**Mr. Paul Miller:** Yeah, I saw that.

**Mr. Les Liversidge:** My red light stayed on.

**Mr. Paul Miller:** Yes, that's right. My light's on now.

Anyway, I listened to your presentation and I have some problems with some of it. I agree with you on probably 80%. You mentioned the superintendents and owners, and my fear is, how many are going to be considered superintendents and owners, or executive offi-

cers, if you've got 10 workers in a company and seven of them are considered executive officers and you've got three guys on a work site?

And I'm a little confused with the 24/7 insurance. I was a tradesman. When I was on a job site, I was covered by WSIB. When I leave that job site, I'm on my own. So I don't know about 24/7 insurance; I don't quite understand that angle.

The other thing was, I agree with you that we need more dialogue and I agree that, at committee level, we have to talk out more of these things. But I don't agree with you on the 24/7 insurance; I think that's a myth. I mean, nobody's covered; if I leave a steel plant and I go home, I'm not covered for insurance. I'm confused by that.

**Mr. Les Liversidge:** Mr. Don Capotosto can address that point. But let me address your first point first. As I understand, your first point was some worry that executive officers may not be executive officers.

**Mr. Paul Miller:** No, no. My worry was, how many of them will there be in a company and how many of them will be exempt and not covered? Any job site I've been on or I've ever been involved in, a lot of so-called operators or executives come to the job site wearing the white hats, tour the job site. They could be injured too. They're called superintendents. So I'm confused—

**Mr. Les Liversidge:** Right. That's a good point. Union officials tend to come to job sites too.

**Mr. Paul Miller:** They do.

**Mr. Les Liversidge:** Union officials aren't even subject to mandatory coverage—

**Mr. Paul Miller:** But they're covered under WSIB.

**Mr. Les Liversidge:** Union officials aren't subject to mandatory coverage under—

**Mr. Paul Miller:** It's in their union dues.

**Mr. Les Liversidge:** —workplace safety insurance. If they opt in, they pay 60 cents per \$100 of payroll, about 10% of the risk. The precedent has already been set to establish what that risk pool is, and I would suggest it probably isn't any more than 60 cents. If you are worried, if the policy objective of coverage is so powerful that it will include the partially at-risk executive officers, if I could do that, or the sometimes at-risk executive officers, or the executive officer who may once in a while be on the job site, you want to make sure that person still gets the full protection of the Ontario Workplace Safety Insurance Act, then it makes complete and total sense to ensure that that premium is a fair premium—

**Mr. Paul Miller:** It would have to be a percentage.

**Mr. Les Liversidge:** —and one that respects the degree of actual risk. I think there's several different ways to address the same problem—

**The Chair (Mr. Shafiq Qadri):** I have to intervene here. Thank you Mr. Miller. Mr. Dhillon.

**Mr. Paul Miller:** I'd like to discuss this further with you—

**The Chair (Mr. Shafiq Qadri):** Mr. Dhillon.

**Mr. Paul Miller:** I'd like that 24/7 insurance. That's something else.

**Mr. Vic Dhillon:** Thank you, Chair.

Thank you very much for your presentation and appearing before the committee. You indicated that there should be a creation of a new verification system. Can you just explain how this would be different from the commonly termed “named insurance” system?

**Mr. Les Liversidge:** Well, it may be the same thing as the named-insurance system. The named-insurance system and the verification system, what Bill 119 has in mind, have never really been defined. We really don't know what the board has in mind. We don't know what is doable or not doable. I do know that until you have a workable mechanism, you will not be able to address the underground economy because you still will not know who's insured.

The issue of independent operators is not the issue, as one of the presenters said here earlier on, which defines the underground economy. The issue of the underground economy is caused by people who avoid paying taxes. People who don't pay taxes go underground; they're not paying workers' comp taxes, they're not paying GST, they probably aren't paying personal income tax etc. They are in the cash economy. That problem exists right now, with or without independent operators. Independent operators are not the proxy for the underground economy; they are two separate and distinct problems.

The independent operator issue can be subdivided into two issues: one is legitimate independent operators, and you want to use the paternalism in the Ontario workplace safety insurance regime to blanket-cover those individuals. Workers' compensation legislation has a general paternalistic social and policy objective, which I guess is generally acceptable. You also want to ensure that people who are in reality—in fact, in law, as I said in my submission—workers are not treated as if they are independent operators. That is not necessarily the same as the underground economy. This is one big worry, that there's going to be a sense that with the passage of Bill 119 we've fixed the underground economy issue. Not so. With the passage of Bill 119 you have, I hope, spotlighted the importance of fixing the underground economy issue. It will then be time to roll up one's sleeves and figure out how you're going to put in the mechanisms to address that. Clearance certificates and things like that aren't enough; they don't do it.

**Mr. Vic Dhillon:** What's your recommendation on how the WSIB should deliberate—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Dhillon. I'll have to intervene there. Thank you, gentlemen, for your deputation on behalf of the Mechanical Contractors Association of Ontario.

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

**The Chair (Mr. Shafiq Qaadri):** I now invite our next presenters, Messieurs Little and Raso of the Labour-

ers' International Union of North America, Ontario Provincial District Council. Welcome gentlemen. As you've seen, 20 minutes, door to door, start to finish. Begin now.

**Mr. Jerry Raso:** Copies of our brief—

**The Chair (Mr. Shafiq Qaadri):** —will be distributed. Thanks.

**Mr. Jerry Raso:** The Labourers' International Union of North America, Ontario Provincial District Council is very, very pleased to be presenting today in strong support of Bill 119.

**The Chair (Mr. Shafiq Qaadri):** Just introduce yourselves, please.

**Mr. Jerry Raso:** My name is Jerry Raso, legal counsel, and to my right is Mr. Patrick Little, business manager of the district council.

The council represents thousands and thousands of workers in the construction industry, as well as workers in other industries. As such, we take health and safety and workers' compensation very, very seriously. We do everything we can to support and to help our workers go to work in the morning and go home at night safely. For this reason, we strongly support Bill 119.

In our opinion, Bill 119 will achieve many, many goals. It won't get there, and we'll get to some suggested amendments, but what Bill 119 will bring us a lot closer to is providing construction workers with the right to WSIB benefits and services. And—you've heard this from COCA and from the Mechanical Contractors Association—it will help level the playing field between employers in the construction industry; it will help to eliminate what the WSIB calls revenue leakage; it will promote occupational health and safety in the construction industry; and it will help to ensure the sustainability of the workers' compensation system in Ontario.

One thing we have to stress right off the bat is this is not a bill that is pushed strictly by trade unions and workers' organizations. The issue of independent operators has been an issue for many, many years in Ontario. It goes back, to my own personal knowledge, to at least 1999. That year the WSIB created a new funding policy. In it, the construction sector received a \$1.2-billion subsidization to address its large unfunded liability. Conditional to this grant was a commitment by the construction industry that future losses wouldn't be subsidized by other industries. Therefore, the construction industry and the WSIB started working, at least since 1999, to address the funding problem.

They created a construction sector strategic plan initiative in 2000. I can speak with personal knowledge because I was active in that, actively participated in it. Management and labour came together and worked diligently for two years discussing the problems. Some of the issues it identified as a group were the problems of revenue leakage, lack of funding, lack of coverage for workers because of this concept of independent operators.

You've heard about this group called JAIG, the joint advisory implementation group. That was formed in 2003. I was personally involved in it; I was the working

group leader for the independent operator committee of JAIG. We met for a year and a half, management and labour. COCA was a member. The Mechanical Contractors Association of Ontario was involved. ResCon, the residential contractors, was involved. The residential framing association was involved, and other groups. We met and together we came to a unanimous conclusion that there should be mandatory coverage in the construction industry, and independent operators should have to be covered in construction.

**1720**

You'll see at page 3 of our brief that the guiding principle of the JAIG was, "All construction employers, workers and independent operators fully participate in the workplace safety and insurance system." That was the principle that the JAIG adopted. We came together to work together and agreed that we needed mandatory coverage in the construction industry. What we agreed was that any legislation that was created for this had to achieve five goals. One was to minimize revenue leakage. Employers currently in the system are subsidizing those that are not. We need to eliminate the opportunity for anyone engaged in Ontario's construction industry evading contributing to the WSIB insurance plan. This full funding will contribute to eliminating the unfunded liability.

We need legislation that's easy to understand and a system that's easy to administer. We need to minimize the number of status determinations and we need to protect workers from coercion. Some workers may prefer IO status; others have been coerced into it by employers: "If you don't do it this way, you don't get work." Workers need to be protected from being forced to pay their own premiums.

At the end, the committee came together and supported mandatory coverage. Two groups, ResCon and the framing contractors, stated that mandatory coverage must also include a named-insured system for enforcement purposes.

So what you saw was management and labour coming together to support a bill such as Bill 119. It is important; we do need Bill 119 in the construction industry. The numbers are staggering; the dollar losses are staggering.

In April 2008, the Ontario Construction Secretariat commissioned a report about the underground economy. That report concluded that a major problem of the underground economy is independent operators. What they found was during the years 2003-05, the number of workers employed as independent operators was between 70,300 and 108,000, with their best estimate being approximately 84,500 workers generating a total income of \$2.8 billion. Approximately 22% of construction employment was under the guise of independent operator. The loss to the WSIB system alone is \$143 million a year. The loss to all governments and all government agencies ranged from \$1.6 billion to \$2.7 billion, with the best estimate being \$2 billion. You see, there is a need to plug this hole, to stop revenue leakage.

This is good for workers because it will provide coverage for more workers than we have now. Workers

are entitled to participate in the workers' compensation system. In 1919 we had the historic trade-off, where workers gave up the right to sue in exchange for the right to workers' compensation benefits. This should not be denied to any worker in Ontario, and Bill 119 will go a long way towards that. Again, we're talking about almost 85,000 workers who are presently excluded from the system.

It's good for employers—it's good for honest employers. You've heard that from employers groups who've been speaking in these last two days. It levels the playing field. When you see \$143 million not going into the system, that means honest employers are subsidizing dishonest employers. They're the ones who are having to make up to pay for this system. Bill 119 will remove this unfair advantage and will help level the playing field. That's why you're hearing honest construction employers supporting this bill.

Bill 119 also promotes health and safety, and that's especially important. It promotes health and safety for two reasons. The first thing is that it gets all construction workers into the occupational health and safety system. What you have now under the Occupational Health and Safety Act is a system whereby companies are required to have occupational health and safety committees; they're required to have occupational health and safety representatives. When you have companies on sites that are not true companies but are one person under the guise of a company, you do not see these occupational health and safety committees, you do not see occupational health and safety representatives.

The Ontario Construction Secretariat defined it this way: "driving the responsibility for safety and prevention to the lowest level." That's what Bill 119 will help to eradicate.

The other reason is for statistics purposes, and promotion and prevention. An important mandate of the WSIB is to promote health and safety. To do that effectively, it needs to know exactly what is going on in the various industries. In construction, they need to know the true picture of health and safety, the true picture of accidents that are going on in the province.

When you have 85,000 workers that are not in the system, you have 85,000 workers that the WSIB does not know about. By bringing everybody under the umbrella of the WSIB, and the Construction Safety Association as well, you get a better picture of health and safety, and a more accurate picture helps you work towards prevention.

It's good for the WSIB to fulfill its mandate. It has two purposes: providing benefits and services for workers, and prevention for health and safety. The system is losing \$143 million a year. That money could be better spent; it could be providing benefits and services for workers and it could be working to promote health and safety.

The council also supports the inclusion of executive officers in the system. While our main focus is on protecting workers and making sure workers are entitled to the benefits and return-to-work policies of the WSIB, we

feel it's also important that executive officers be included, to make sure that the system works. Right now, we think the independent operator has served as a loophole. We're afraid the executive officer system will also become a loophole. As the question was asked over here, how many people are going to become executive officers? Also, we don't think that having exceptions is good for bureaucracy. The WSIB is going to have to develop a system for determining who is a true executive officer and who isn't.

While we support the bill and urge you to pass it, we do have several concerns about the bill and we're recommending several changes to it.

The first is the exemption for the home renovation sector. We think that is a massive loophole that could be and will be exploited, and it should be closed. The first thing is, all workers who work on a construction site should be covered, and that includes roofers who do re-roofing on a house. We submit that there's no reason why a worker who works on renovating homes for his living, such as repairing roofs, should be excluded from the right to coverage and the right to return to work, both benefits of the WSIB.

Also, those numbers are huge. The Ontario Construction Secretariat, in its 2008 report, stated that almost 87% of independent operators were found in the residential sector, with almost 55% of those coming from the home renovation sector. Thus, we're talking about a potential of over 40,000 workers still being excluded.

The problem won't end. We're desperately afraid that this loophole will be exploited and we're going to see a lot of people who are not in the home renovation sector but being classified as being in the home renovation sector.

Also, how is this system going to work? What if you have a worker who works on new construction one week and then moves to doing repairs and renovations another week? Simply put, that exemption is not workable in the construction industry. You have workers going back and forth from home renovations or repairs to new construction. How do you possibly regulate that? It will be very, very difficult to administer and enforce.

Again, we're talking about a bureaucracy that has to be created to administer this system, to make sure that people truly are in the residential home renovation sector and not using that as a guise. How do you regulate people who move in and out of the sector?

Our other concern is in terms of who will pay the premiums. It is submitted that workers should not have to pay their own premiums. That is not the purpose of the workers' compensation system. Again the historical trade-off: They've traded off the right to sue for WSIB benefits. It's not right that some workers have to pay their own premiums. I have to admit, Bill 119 seems unclear as to who will have to pay the premiums for people formerly classified as independent operators.

1730

If you look at subsection 12.2(1), it appears that you have independent operators being deemed to be workers so they get coverage, but then subsection 12.2(2) of the

bill seems to state that they also will be deemed to be their own employer and responsible for the premiums. I hope I'm wrong, I hope Bill 119 does not require workers to pay for their own premiums, but if I am correct, we submit that this must be amended to make it clear that workers formerly classified as independent operators do not have to pay their own premiums.

Another amendment that we're requesting is that the bill be amended to have a "no reprisal" clause in the Workplace Safety and Insurance Act, to protect workers from being coerced into paying their own premiums. What we're afraid of is that you will see companies that have enjoyed not paying CPP contributions, EI contributions and WSIB premiums now try to force their workers to pay their own premiums. This was an area that was addressed by JAIG. I urge you to read it. The JAIG report, which I know the provincial building trades council has enclosed with their brief, recommends that workers be protected from coercion.

The way we feel that this can be done is giving the WSIB the power to prevent employers from making workers pay their own premiums. How you would do it is similar to what's in the Labour Relations Act, that employers are not allowed to discipline or fire workers for refusing to pay their own premiums, and then the WSIB would have the power to reinstate workers that were fired or disciplined for exercising their right to have their employer pay their premiums.

In summary, we strongly support Bill 119. We think it's good for workers, it's good for employers, it's good for health and safety prevention, and it's good for the province of Ontario as a whole, but subject to those amendments that we're urging. Eliminate the home renovation exemption, make sure workers do not have to pay their own premiums and provide some protection in the WSIB by putting in a "no reprisal" clause.

**The Chair (Mr. Shafiq Qadri):** Thank you. A firm minute per side. Mr. Miller.

**Mr. Paul Miller:** In your opinion, what accounts for the significant increase in independent operators in construction?

**Mr. Jerry Raso:** What accounts for it? I would think it's the economic situation, employers simply wanting to keep their money, not wanting to pay premiums. So they go to workers and say, "We want you to classify yourself as an independent operator so we don't have to pay the premiums, we don't have to pay CPP and EI contributions."

**Mr. Paul Miller:** In your opinion, what is the relationship between covering independent operators in the construction industry and reining in the underground economy in construction?

**Mr. Jerry Raso:** It's definitely connected. I urge you to read the construction secretariat's report. It talks about one of the major problems of the underground economy: employers misclassifying their employees as independent operators.

**Mr. Paul Miller:** Do you think that under these new rules that they're bringing forth—

**The Chair (Mr. Shafiq Qaadri):** With respect, I have to intervene there, Mr. Miller. Mr. Dhillon.

**Mr. Vic Dhillon:** Can you further elaborate as to why you feel executive officers should be included and possibly share an example or two about where unsavoury employers have given the title of executive officer to avoid paying the premiums?

**Mr. Jerry Raso:** We've actually seen examples in the construction industry already where people have been found doing work on construction sites—workers—and then we find out that a company literally has four or five or six executive officers. Everybody becomes an executive officer. We're more afraid of the issue of the executive officer, just like that, becoming a loophole. We want the door closed and—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Dhillon. To Mr. Bailey.

**Mr. Robert Bailey:** Thank you, Mr. Raso and Mr. Little, for your presentation today.

Would you be supportive of something like the named-insurance system and of something like an Ontario health card, where that employee, man or woman, when they went to a job site, could prove that they're covered by either WSIB or something equivalent?

**Mr. Jerry Raso:** Those are two questions. In terms of named insured, I think we would support that. A problem is that now employers don't report the names of people that are covered under the system; they just report 10 employees when, in fact, they have 20 employees. A named-insured system would be good for workers because one area that can be a big problem for workers is when they file WSIB claims for occupational disease that takes 20 years to develop, or hearing loss—they have to show the WSIB where they've been working for the last 20 years, and that's very hard for construction workers, who go from company to company. This way, a named-insured system would provide a good tracking system for the WSIB.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Raso, for your deputation on behalf of the Labourers' International Union of North America.

#### ONTARIO ROAD BUILDERS' ASSOCIATION

**The Chair (Mr. Shafiq Qaadri):** I now invite our final presenters of the day, Mr. Bradford and Ms. Renkema of the Ontario Road Builders' Association. Welcome. As you've seen, you have 20 minutes. I invite you to begin now.

**Mr. Rob Bradford:** That's a go. Thanks, Mr. Chairman and members of the standing committee. I'm Rob Bradford, the executive director of the Ontario Road Builders' Association. I have with me Karen Renkema, who is our director of government relations.

Very briefly, ORBA is an association operating in the heavy construction industry. We represent about 100 contractors that build most of the provincial roads and bridges in Ontario and are very, very active in the muni-

cipal sector as well—most of the large companies whose names you'd recognize are members of our association. Our members consist of both union and non-unionized road building firms, so we're not coming at you from either direction today. We employ roughly 25,000 workers in peak season.

The issue of mandatory WSIB coverage in construction has been around as long as I have, and that's way too many more decades than I care to recount. That's why the advent of Bill 119 is encouraging to us. We are generally very supportive of the principles in Bill 119. We think it offers the opportunity to level the playing field. You've heard that before several times, particularly from the contractors' organizations. It's very, very frustrating for employers who play by the rules and cover their workers for WSIB to miss out on a million-dollar bid by a couple of thousand dollars and know it perhaps went to a contractor who's not carrying those costs—so from that point of view, we're very supportive.

We also believe that a mandatory coverage system should minimize WSIB revenue leakage. In theory, that's exactly how it should work, and I think we'd be rather disappointed if that weren't one of the outcomes. Likewise, we would be looking for mandatory WSIB coverage to ensure that premiums in our sector are decreased. We would expect to see decreased premiums due to the fact that we'd have a much larger pool of money being paid in for workers who aren't covered now.

It's perhaps important to note that from where we're coming from in the engineering sector, the heavy construction sector—however you want to name it—the underground employment in our industry only averages about 3%. As you've heard before, it's much, much more prevalent in other sectors of the industry. So why, then, are we even here today talking about Bill 119, even though our particular sector doesn't have as much of this underground economy element as other sectors? We have to share in the loss to the construction industry and we have to take our share in paying for coverage of workers who are not covered. We think our rates are inflated roughly 20% to make up the losses that we're seeing.

We think a system of mandatory coverage should be measured by its ability to prevent legitimate exemptions from being abused by industry participants or used to escape their statutory and payment obligations under the WSIA—and that's the current case with the independent operators' exemption. These loopholes place those employers complying with their statutory obligations at a competitive disadvantage to those who are willing to play fast and loose with the rules—to cheat, if you will. At issue here are not the exemptions in the legislation but instead the ability of the exemptions to be used as a loophole to avoid obligations under the Workplace Safety and Insurance Act.

Therefore, we believe that Bill 119 is certainly a step in the right direction. In addition to providing clarity on who should be covered, and therefore the financial ability to ensure a sustainable WSIB system, the bill, we think, also provides the legislative and regulatory tools that we

need to devise a system of verifying coverage for the construction industry.

1740

We do have some questions, perhaps concerns even, on Bill 119, and I'm couching our support for the legislation in a couple of points that we'd like to raise to you, particularly on the issues of the renovation sector and the subject that almost every group has spoken to you so far on: the coverage of officers and directors. I'm going to ask Karen to now give you a little more detail on both those items.

**Ms. Karen Renkema:** According to our membership, the most important principle of mandatory WSIB coverage is fairness within the system. Therefore, they have concerns with the legislation with regard to mandating WSIB insurance coverage for legitimate executive officers of construction companies—subsection 12.2(1).

We question why the legislation would mandate WSIB coverage for those in our sector who operate as legitimate executive officers, i.e., presidents, general counsel, CFOs etc., and who do not, in any manner, perform construction work. Essentially, our members perceive this section of the legislation as merely a method to raise much-needed revenues for the WSIB. By requiring WSIB insurance for legitimate officers of a company who do not perform construction work, the legislation has not achieved its stated goal of improving safety and exposing the underground economy. Legitimate executive officers—non-construction workers—are not contributing to the underground economy as they do not work on a construction site and therefore carry no risk.

We understand that the intention of subsection 12.2(1) is to close the loophole that currently exists for construction workers to opt out of coverage. We also understand that mandating coverage for executive officers is, in part, a casualty of war in this legislation in order to close loopholes. We agree that the exploitation of current exemptions in the WSIA must be brought to an end.

We acknowledge that the government and the WSIB, in their enforcement activities, find it difficult to catch the bad actors in the system; for example, those who currently misrepresent themselves as executive officers, yet perform construction work. Although this challenge exists for the WSIB, this hurdle should not be the impetus for the government and the WSIB to search for revenues from those companies that are legitimately operating by the rules.

Without consideration for legitimate executive officers of construction companies, the government and municipalities will realize an increase in the cost of infrastructure. The cost of increased WSIB premiums will be borne by those who require the services of road builders to build public infrastructure. In addition to paying premiums for private insurance that covers executive officers for far more than workplace injuries, our members will also realize a substantial increased cost of paying WSIB premiums for executive officers who do not perform construction work.

There have been many suggestions over the years on how to determine who is a legitimate executive officer

and who is not. However, all of these suggestions have been devised without the full realization of a mandatory WSIB coverage scheme, as suggested by Bill 119. I know that the JAIG process has been mentioned a couple of times here. However, we suggest the legislation could be amended to allow, subject to the approval of the Lieutenant Governor in Council, the WSIB, in consultation with industry stakeholders, to make regulations that it deems appropriate to exempt legitimate executive officers from WSIB coverage. This would allow further exploration of an appropriate exemption, as the WSIB will be considering many policy and procedure modifications if this legislation is enacted. There may be further opportunities through these policy and procedure changes that have not yet been contemplated by the WSIB and industry stakeholders. Such a regulation could be tied to a fixed time period to allow discussions on alternatives, and if the industry and the WSIB cannot find an agreed-upon solution to a legitimate executive officer exemption, then we would move forward as an industry operating under Bill 119, as currently drafted.

However, if such a regulation is not deemed appropriate, we request that in the course of implementing Bill 119 the government and the WSIB give serious consideration to ensuring that legitimate executive officers—those who do not perform construction work—be covered at a premium rate commensurate with the risk that they are exposed to.

Again, Bill 119 provides further tools and procedures for the WSIB to appropriately ascertain the legitimacy of an executive officer designation. In this case, section 9.3 of the WSIA, with its direct reference to the small company limit of five times 175% of the average industrial wage, could be used as a minimum qualification to be eligible for executive officer insurance. Those firms under the threshold would be ineligible to apply, while those above it would qualify for the risk-adjusted premium for their executive officers as defined in WSIA policy. This would preserve the legislative intent of the bill, while mitigating its impact on legitimate executive officers.

Our membership is further concerned with the current exemption in Bill 119 for home renovators. Currently, Bill 119 provides an exemption for a sector of the industry that clearly operates as construction workers and is at risk; however, mandating payment from another sector of the industry that legitimately employs not-at-risk executive officers. Therefore, we believe it to be appropriate to treat all facets of the industry fairly and require coverage from all at-risk construction workers.

As drafted, subsection 12.2(5) is not narrowly defined enough to prevent its manipulation and abuse in a sector of the industry that has grown well accustomed to avoiding its statutory obligations. One could easily contemplate a scenario where a homeowner pays a contractor's employees directly for the work performed, thereby removing the obligation of that contractor to remit WSIB premiums on behalf of his or her employees.

Although Bill 119 does specify that the exemption only applies to an individual who performs no con-

struction work other than exempt home renovation work, its potential for abuse is both clear and present. We believe that additional criteria need to be established in order to prevent the exemption from being abused.

As a potential remedy, we believe that an amendment to the bill is necessary which requires, again, subject to the approval of the Lieutenant Governor in Council, that the WSIB, in consultation with industry stakeholders, make regulations it deems appropriate that further restrict the ability of the home renovation exemption to be abused and applied to classes of individuals not contemplated under the act. Without such an amendment, the WSIB will continue to experience revenue leakage in this sector, which, in turn, will affect the premiums of all construction employers.

Finally, in order for the legislation to achieve the stated goals of levelling the playing field and uncovering the underground economy, the WSIB must implement a system of verifying WSIB coverage. We commend the government for amending section 183 of the WSIA in order to allow regulations related to verification of coverage. We further encourage the government and the WSIB to recognize the absolute need for a system to verify coverage; otherwise, those that have avoided paying WSIB premiums, those that under-report their payroll, and furthermore, those that find any regulatory loophole available, will continue to do so.

In summary, Bill 119 is absolutely a step in the right direction. With a few slight modifications, we believe the industry and our members will realize the benefits of a level playing field. I thank you for your time this afternoon and would welcome any questions.

**The Chair (Mr. Shafiq Qadri):** Thank you. You have two minutes per side.

**Mr. Vic Dhillon:** Thank you for your presentation. With the passage of Bill 119, the legislative barriers for the creation of a verification system will be removed. You advocate for such a system. Now, going forward, could you give any advice, recommendations to the WSIB as to what type of system should be put in place?

**Ms. Karen Renkema:** Well, I think there have been many discussions regarding the named-insured system, and the named-insured system, again, is just a concept that stakeholders in the construction industry have talked about for many years now. Now that the legislative barriers have been removed, I think the opportunity, again, is for the industry to sit down and determine exactly what kind of system would work for both employers and employees that work within the system. At this point, without knowing exactly what changes would take place at the WSIB, I don't think we are at the point of recommending a specific system. However, I think it would behoove the government as well as the industry to sit down and have a real conversation about it.

**Mr. Vic Dhillon:** In your presentation, you indicated that WSIB premiums and rates are inflated by 20% because the costs for the injuries are paid by those who are playing by the rules and paying their fair share. Can you provide the committee with examples of any nega-

tive players or practices out there, of what's occurring in the construction industry today for that inflation of 20%?

**Ms. Karen Renkema:** I guess a specific example I could use is, a company has 20 employees, but only—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Dhillon.

**Mr. Robert Bailey:** Thanks, Ms. Renkema and Mr. Bradford, for coming in today. I've heard estimates in your industry alone that the implementation of this to the chief executive officers, independent operators etc. could cost as much as \$30 million. I don't know whether you can verify those numbers, but if that's the case, would these dollars not in fact come out of infrastructure projects funded by the province of Ontario so that cities, small towns etc., that want to build a bridge or sewer project are going to lose that money back to the government indirectly through WSIB? Would I be right in saying that?

**Mr. Rob Bradford:** I think Karen pointed that out quite clearly. Our customers, our government agencies—80% of our industry is taxpayer-funded dollars, so if we—and I'll refer again to double insurance—have to come up with cash to pay for a new insurance scheme for people who are already covered by insurance, that will go straight into the bid of the contractor, and it will mean that instead of paving 16 kilometres next year, you're going to pave 15, and we don't need that right now. You know what's going on with our infrastructure.

**Mr. Robert Bailey:** Yes. You also feel that moving to this named-insurance system would be a way of going, if we took a little more time to study this bill and more time to implement it?

**Ms. Karen Renkema:** I think a system of verification is the only way—and I think Les spoke to this, as well as COCA—to ensure that companies are both not only paying into the system but not under-reporting their payroll as well. Whether we call it a named-insurance system or a system of verification, I think we all mean the same thing. It just depends on, at the end of the day, exactly what the lingo will be for it.

**Mr. Robert Bailey:** Thank you.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Bailey. Mr. Miller.

**Mr. Paul Miller:** I have a tendency to disagree. I don't like the thought of a named insurance. I would prefer everything under the WSIB, and I can't go with that.

In reference to the executive officers, I have a real problem with that. I want to know what the government is going to do to set up a system that's going to properly name and identify executive officers, and not in great numbers. You might have a company treasurer, you might have a company CEO, you might have a company this and that; I can see half a dozen in a large company—maybe. I don't want to see 50 newly created positions to be exempt from WSIB payments. I don't want to see that, and I don't see anything in that bill that addresses that, and that's a problem.

I also have a problem with the—operators do come to the job sites, owners do come. I don't care if you're a mid-size construction company or a large construction company. I've seen plenty of superintendents show up on job sites. They should be covered too.

If it's a percentage, that's different. We could always entertain a percentage. If they're only there 20% of the time and the rest of the time they're in the office, that's understandable. That could be negotiable, but I don't see anything in this bill that addresses that, and I have a real problem, because they can go under the guise of being a CEO or an executive officer, and in fact, they really aren't. There is the ability to get around the system there too.

I agree with you that some of them should be exempt, but I want strict numbers and I want to know who is considered a CEO in that. That's my biggest beef.

**Ms. Karen Renkema:** I don't think we disagree with you that only legitimate executive officers should be

covered. That's been our argument from the beginning of speaking about this bill. I think that right now, the way the executive coverage exemption happens is, it's not even necessarily an exemption given at the beginning; it's something that's determined through an audit. I think that the policy could be very much tightened up. I think that with the new tools that the WSIB is given—

**The Chair (Mr. Shafiq Qadri):** I'll have to intervene there. Ms. Renkema and Mr. Bradford, thank you for your deputation and presence on behalf of the Ontario Road Builders' Association.

I'd just like to alert the committee that the deadline for filing amendments for this bill to the clerk is Thursday, November 20, at 5 p.m.

Is there any further business before this committee? If not, the committee stands adjourned until Monday, November 24 at 2:30 p.m., for clause-by-clause consideration of Bill 119. The committee is adjourned

*The committee adjourned at 1754.*



## **STANDING COMMITTEE ON SOCIAL POLICY**

### **Chair / Président**

Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

### **Vice-Chair / Vice-Président**

Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

Ms. Cheri DiNovo (Parkdale–High Park ND)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Dave Levac (Brant L)

Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Mr. Khalil Ramal (London–Fanshawe L)

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Mr. Peter Shurman (Thornhill PC)

### **Substitutions / Membres remplaçants**

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Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

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