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**Official Report  
of Debates  
(Hansard)**

**Wednesday 25 November 2009**

**Journal  
des débats  
(Hansard)**

**Mercredi 25 novembre 2009**

**Standing Committee on  
General Government**

Technical Standards and Safety  
Statute Law Amendment Act,  
2009

**Comité permanent des  
affaires gouvernementales**

Loi de 2009 modifiant des lois  
en ce qui a trait aux normes  
techniques et à la sécurité

Chair: David Oraziotti  
Clerk: Trevor Day

Président : David Oraziotti  
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 25 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Mercredi 25 novembre 2009

*The committee met at 1601 in room 151.*

### SUBCOMMITTEE REPORT

**The Chair (Mr. David Oraziotti):** Good afternoon, everyone. Welcome to the Standing Committee on General Government. The first item of business is a subcommittee report. Could someone read that for us? Mr. Mauro, please?

**Mr. Bill Mauro:** Thank you, Chair. Your subcommittee met on Friday, November 20, 2009, to consider the method of proceeding on Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996, and recommends the following:

(1) That, pursuant to the order of the House, the committee meet in Toronto on Wednesday, November 25, 2009, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and the Canada NewsWire.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Tuesday, November 24, 2009.

(4) That groups and individuals be offered 15 minutes for their presentation should the committee receive eight or fewer requests or 10 minutes for their presentation should the committee receive nine or more requests.

(5) That, in the event all witnesses cannot be scheduled, the committee clerk provides the members of the subcommittee with a list of requests to appear by 12 noon on Tuesday, November 24, 2009.

(6) That the members of the subcommittee prioritize and return the list of requests to appear by 1 p.m. on Tuesday, November 24, 2009.

(7) That the deadline for written submissions be 5 p.m. on Thursday, November 26, 2009.

(8) That, pursuant to the order of the House, proposed amendments be filed with the committee clerk by 12 noon on Friday, November 27, 2009.

(9) That, pursuant to the order of the House, the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, November 30, 2009.

(10) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary

arrangements necessary to facilitate the committee's proceedings.

**The Chair (Mr. David Oraziotti):** Thank you, Mr. Mauro. Any comments on the subcommittee report? Ms. Munro?

**Mrs. Julia Munro:** Just to make one brief comment for the record: the fact that the meeting was held on Friday, November 20 and that the clerk was asked to put the information by the various methods outlined here—that people had, basically, 24 hours, which I think is really unrealistic for people to be able to know about it and fit it into their schedule for today. So I would just want it noted that point (2) could not be done before Monday.

**The Chair (Mr. David Oraziotti):** Fair enough. Any further comments? Seeing none, all in favour—

**Mr. Peter Tabuns:** Mr. Chair, I just concur.

**The Chair (Mr. David Oraziotti):** Okay. Any further comments? Seeing none, all in favour of the subcommittee report? Carried.

**Mr. Peter Tabuns:** Mr. Chair, before we proceed, I've had a request from one of the speakers today: if she could have a photo taken of her while she's making her presentation. I understand it's within your authority.

**The Chair (Mr. David Oraziotti):** Yes, that's not a problem.

**Mr. Peter Tabuns:** Not a problem? Thank you.

### TECHNICAL STANDARDS AND SAFETY STATUTE LAW AMENDMENT ACT, 2009

### LOI DE 2009 MODIFIANT DES LOIS EN CE QUI A TRAIT AUX NORMES TECHNIQUES ET À LA SÉCURITÉ

Consideration of Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996 / Projet de loi 187, Loi modifiant la Loi de 2000 sur les normes techniques et la sécurité et la Loi de 1996 sur l'application de certaines lois traitant de sécurité et de services aux consommateurs.

### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair (Mr. David Oraziotti):** We'll move to the presentations. Our first presentation is the Canadian

Federation of Independent Business. Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time not used for your presentation will be given to members of the various caucuses to ask questions about your presentation. Please, whoever will be speaking, state your name for the purposes of Hansard, and you can begin when you're ready.

**Mr. Satinder Chera:** Thank you, Mr. Chair. My name is Satinder Chera, and I'm the director of provincial affairs with the Canadian Federation of Independent Business. I'm joined today by my colleague Angela Cloutier, the federation's policy analyst here in Ontario. We will be speaking entirely from the slide deck that is in the presentation on the right side of your kits.

As you can tell from the slide deck, we think that Bill 187 is certainly a step in the right direction and way, way long overdue in terms of transparency and accountability.

Going directly to slide number 2, just a quick word about CFIB: We have been in operation for 38 years now. We have 105,000 members across the country, with 42,000 in Ontario. These are Canadian-owned, privately held small businesses. We accept no government funding; we are 100% financed by our members, and it is our members that set our association policy.

Going to slide number 3, as you can tell, 81% of Ontario's businesses employ fewer than five people. This is a critical point because oftentimes, regulations and policies are made that don't accurately reflect the diversity of our business community.

Slide number 4: CFIB's business barometer is something that we've been tracking now on a monthly basis. It indicates that in the month of October, small business optimism dropped off somewhat in the province of Ontario. We think that's attributable to the high dollar and the impact on manufacturers.

Slide number 5: You have before you a survey that we do with our members in their place of business every year. It outlines the key priorities that our members see for government action. I've circled "government regulation and paper burden" because that continues to be a huge challenge and certainly is relevant to the discussion today.

Going to slide number 6, the regulatory paradox, as we would refer to it: Regulations, of course, always have at least one laudable purpose, the public good, but they can be a bad thing if they exceed the government's capacity to administer them or they exceed the ability of small businesses to cope with them.

Going to slide number 7: We think that the delegated administrative agency model is inherently defective. Why? Obviously, from a government standpoint, we can see why it's attractive. It delegates responsibility for safety to an arm's-length agency, i.e., it helps to remove politics from any calculation concerning health and safety, which is a good thing. But it also takes the cost and employee head count off government books.

However, the Sunrise Propane explosion demonstrated two things: One is that the public continues to hold a

government, not these arm's-length agencies, responsible for public safety, and also, the potential costs can be very high for everyone when things go wrong.

I'll pass it over to my colleague Angela for the rest of our presentation.

**Ms. Angela Cloutier:** When it comes to the TSSA and other delegated agencies, there is a high degree of dissatisfaction amongst our members. For instance, let's look at governance: 93% of Ontario's businesses have fewer than 20 employees, yet they are inadequately represented on their boards and on the advisory councils.

On the question of the fees process, hourly fees present a moral hazard to inspectors and the organizations. There's no effective appeals mechanism. As a matter of fact, the TSSA itself admits that over 50% of its appeals are due to fee charges.

Small businesses have no effective appeal of regulatory decisions either. In fact, the statutory director oversees the regulations, and he's also the one who hears the appeals, providing no effective appeal process for small business. It's difficult to believe, yet it is true.

As it stands, government lacks the ability to exercise an appropriate degree of control and supervision over their agencies.

In the next two slides—the first slide shows how the TSSA sees itself and how it's doing an effective job. However, if you switch over to slide number 10, you'll see the results that the CFIB has obtained and the questions that it asked members, the customers—not only our customers, but TSSA customers. And it shows here that the effectiveness is not quite as high as is proposed by the TSSA.

#### 1610

Slide number 11: When it comes to Bill 187, we do think it is a step in the right direction. CFIB's long-standing concerns include the government's lack of ability to exercise an appropriate degree of control and supervision over the TSSA. We maintain that the TSSA should be subject to review by the Auditor General and that the TSSA board lacks adequate small business representation.

When it comes to Bill 187, we are pleased to see that the minister will guide the strategic focus of the TSSA by issuing policy directives. We're also pleased to see that the Auditor General will have access to the records of the TSSA, and moreover, that the minister will appoint the chair and vice-chair from the board.

That being said, more needs to be done. Therefore, our recommendations to the committee are as follows: Move quickly to implement Bill 187; greater scrutiny and accountability of the TSSA is long overdue; and extend those changes to the other delegated agencies.

Secondly, implement the recommendations enclosed in the independent review conducted by Elaine Todres. You will have our report to Ms. Todres enclosed in your kit as well, on the right-hand side. Included here are her words, "For both the complaint process and the appeals process, the lack of an independent body to whom a

customer can complain may reduce the likelihood of a complaint being filed.”

Finally, convene a working group to address the impact of new regulations on small propane operators. Small operators agree with the need for new regulations; however, the financial burden ahead for them is great. There are numbers such as \$30,000 and \$40,000 being bantered about in order to meet these regulations. We would adopt a framework for small operators that is similar to the 2004 changes to the drinking water regulations.

Thank you, ladies and gentlemen. We’re ready to take your questions.

**The Chair (Mr. David Oraziotti):** Thank you very much. Ms. Munro, we have about seven minutes total, so we’ll try to get through all the caucus members. Go ahead.

**Mrs. Julia Munro:** Thank you very much for coming here today. I wondered if you could give us a little more information with regard to some of the proposals that you have put here on the table in terms of the need for greater scrutiny, the question of the working group. One of the things that is very clear, in looking at the delegated authority, is the difference between the larger operators and the smaller. Obviously, by your very nature you represent the smaller ones, and I think that’s a balancing act for government in a number of areas. So, given your experience and expertise it would just seem to me that this might be a point you would be able to give us more information on.

**Mr. Satinder Chera:** Thank you, Ms. Munro. Let me start off by saying that our members certainly respect and see the need for having measures in place to uphold public safety and the health of all Ontarians. I think the challenge becomes when you impose regulations that are a one-size-fits-all model. Smaller firms don’t have the resources that larger companies do; this is one of the reasons why the government has put in place the Open for Business initiative, which is to try to get at the issue of the regulatory burden.

When it comes to examples, we know that with the drinking water regulations, in the aftermath of the tragedy in Walkerton, one of the concerns we started to receive from members is that this one-size-fits-all model is going to hit smaller firms really hard, to the point where they’ll just go out of business. So the government, to its credit—in 2004, then-Minister Dombrowsky put in place changes to the water regulations that accepted that not all businesses are the same, that not all businesses have the resources to carry out the regulatory functions. We would argue that in this instance here, we’ve been hearing a lot of concerns from small propane operators that the government would look at what they’ve already done in other areas of public policy and adopt similar measures in this instance here.

**Mrs. Julia Munro:** Do I have more time?

**The Chair (Mr. David Oraziotti):** Briefly.

**Mrs. Julia Munro:** Okay. I was going to ask you: I don’t remember which regulation it was that the expert

panel had; it was something to do with the filing of a plan with the local fire department.

**Mr. Satinder Chera:** Yes.

**Mrs. Julia Munro:** It’s my understanding that this would be something that they might not necessarily have the expertise to deal with.

**Mr. Satinder Chera:** Yes. This is something that speaks to customer service at the TSSA and some of the issues that this bill can address.

Regulations were passed which required small operators in specific industries to file a risk management plan. The risk management plan had to be signed off on by the local fire department. We had a member that spent \$5,000 to get an engineer to help them put together a risk management plan. That plan was then taken by the business owner to the local fire department, at which point the fire department said, “We have neither the resources nor the ability to sign off on these sorts of plans.”

We raised this issue with the TSSA because the TSSA also turned around and said to our members, “If you do not have this plan signed off, we will revoke your licence to operate.” We wrote to the TSSA a series of letters where we asked them for one very specific commitment, which was that, owing to this type of a situation where a business has spent the money, has the plan in place, but the fire department refuses to sign off on it because they don’t have the resources, they will not yank their ability to continue to operate. It’s not that they don’t agree with public safety, but this is one area where you should have some sort of discretion.

**The Chair (Mr. David Oraziotti):** Okay, I’m going to stop you there. You might be able to elaborate on this point as we go through, but I need to move on. Mr. Tabuns, go ahead.

**Mr. Peter Tabuns:** I would appreciate it if you would continue with your elaboration.

**Mr. Satinder Chera:** On that point—and thank you, Mr. Tabuns—we wrote to the TSSA, and the correspondence back and forth is in your kits. The TSSA could not even come to the point of acknowledging the concern, let alone providing any type of assurance.

Then we went to the government, because the TSSA said, “If you have ongoing problems in this area, call the government,” which kind of astonished us because this is an arm’s-length agency that the government has set up. Either they’re in or they’re out. If they’re out, they have a certain amount of responsibility to the customers, to businesses in Ontario, to treat them with a certain level of respect. If a business comes forward and has done exactly what the government has said and it is then found that the participating bodies are not able to sign off on these types of rules, then what is wrong with the TSSA simply writing and saying, “We will not force you out of business”? Thankfully, our understanding in speaking with Minister McMeekin is that his ministry is looking at this very, very closely. Hopefully, there will be a resolution fairly soon.

I think it does speak to the fact that if you take a little bit of light off the TSSA, they’ll go back to their bad habits.

**Mr. Peter Tabuns:** Could you just speak very briefly about these appeals on fee charges? I noticed in your letter some discussion about that, and I'm curious as to what is really there.

**Mr. Satinder Chera:** Let me give you another example: We had a member that called us two years ago. They had trouble with the TSSA on a particular policy issue. The member said, "I'm frustrated. I've contacted them non-stop. They're not even willing to listen." Our member services department ended up contacting the TSSA on the member's behalf. The member, two weeks later, got a bill for \$500 because the TSSA spoke to the CFIB. It was because our member had gotten TSSA to call on their behalf that the TSSA wanted to go after our member. Again, thankfully, the Ministry of Consumer Services looked at the issue and brought it to the TSSA's attention, and the \$500 fee was waived. But you can imagine that for a lot of small firms out there, this would be very intimidating. Why would they even be put in a position like that, that to simply call and get them to interpret they're going to be charged \$500? This is a true story. This is not made up. This is a true story, and in fact the ministry was involved.

**Mr. Peter Tabuns:** Unfortunately, I believe you.

**The Chair (Mr. David Oraziotti):** Thanks; that's the time. Go ahead, Mr. Mauro.

**Mr. Bill Mauro:** I'm substituting here today for the PA on this bill, who can't be with us today. I want to ask you about this particular study that you referenced, the second speaker, because I wasn't familiar with it, this Elaine—you know the one I'm referring to?

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**Ms. Angela Cloutier:** Yes; Ms. Todres.

**Mr. Bill Mauro:** It's in our package here. This is not the propane safety review, of course, that we're talking about. Can you tell me a little bit more about it?

**Ms. Angela Cloutier:** Ms. Todres did meet with a lot of stakeholders and she did meet with us. What you have in your package right there is our submission to Ms. Todres on the TSSA and delegated agencies. During the month of May 2008, through to her report, which came out just recently in September, I believe, she conducted the different stakeholder meetings on all of the delegated agencies. Two of them that she reviews are the TSSA and the ESA, the Electrical Safety Authority, and the report goes through the entire governance. There is a provision as to how these agencies are functioning, their boards, their authorities. She's quite thorough. I must say that, as you saw from our report here, we were able to see some outcomes from our concerns being highlighted in her report. I know that the report is available to you. It's quite extensive. It's 438 pages. It deals with all of the agencies.

**Mr. Bill Mauro:** I just want to close by thanking you for your acknowledgement of the significant move in the bill, especially on the part about the Auditor General and his role that he's going to be able to play from this point forward, should the legislation pass.

**The Chair (Mr. David Oraziotti):** That's all the time we have for your presentation today. We appreciate you coming in.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair (Mr. David Oraziotti):** Our next presentation is Ontario Public Service Employees Union. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. The time that you don't use will be divided among the caucuses here for questions. So just state your name for the record and you can start.

**Mr. Smokey Thomas:** My name is Smokey Thomas. On my right I have Joe Kavanagh. Joe's a member of OPSEU's enforcement and renewal committee of the Ministry of Economic Development and Trade. Megan Park is our senior campaigns officer. I'd like to thank you for the opportunity to be here today. Thank you, Brother Tabuns.

We are pleased to provide the following commentary on Bill 187. It has been more than 10 years since the Conservative government of Mike Harris placed public safety and consumer protection in private hands. In 1996, the Harris government delegated the responsibility for several laws that regulate industries to the industries themselves. As a result, a number of business sectors, including several with serious public safety implications, became self-regulating. Five industry-run authorities took over the licensing, inspections, enforcement and complaint-handling work once done by crown employees. The most well known, and the subject of our presentation today, is the Technical Standards and Safety Authority, the TSSA.

As you know, the TSSA regulates the following sectors: the transportation, storage, handling and use of propane, diesel, gasoline and natural gas; boilers and pressure valves; amusement park rides and elevators; and upholstered and stuffed articles.

In addition to the TSSA, the following sectors got their own industry-run authorities: travel agents and wholesalers, real estate agents and brokers, motor vehicle salespersons and dealers, and electrical contractors and electricians.

Most of the crown employees who had administered and enforced the regulations governing these sectors had worked in the consumer protection branch and the technical standards division of the Ministry of Consumer and Commercial Relations. They were public employees. They were formally appointed under the Public Service Act of Ontario. They worked for the people of Ontario.

If a citizen was unhappy with a service provided by the consumer protection branch or the technical standards division, she or he could file a complaint with the Ontario Ombudsman, the Auditor General could conduct independent value-for-money and compliance audits of the branch and division, and every person in Ontario had a right of access to a record or part of a record relating to

the work of the branch and division, unless it was a cabinet document, part of a law enforcement proceeding or related to labour relations.

Once these industry-run self-regulating authorities were set up, the administration and enforcement of laws protecting public safety went behind a cloak of secrecy. The authorities are managed by boards of directors that come from the very businesses under regulation. This places the directors in potential conflicts of interest between their role as representatives of particular sectors and their obligations as directors to uphold legislation. They report to the Minister of Consumer Services but not to the Legislature and therefore not to the people of Ontario.

The authorities' employees, because they are not public employees, are not subject to the rights and obligations, or the protections, of the Public Service of Ontario Act. This act lays out the procedures for public employees to disclose wrongdoing in government. The act states that no person shall make a reprisal, such as discipline or termination, against a public employee for making a disclosure of wrongdoing or co-operating with an investigation into a disclosure of wrongdoing. No such protection is afforded to the employees of these five industry-run authorities, including the TSSA. It is worth noting that there are many more employees working at these authorities than worked in government.

Self-regulated businesses carry the tab for the authorities through licensing and registration fees. They may be interested to know that back in the mid-1990s, between 300 and 400 OPSEU members in total administered and enforced the legislation now carried out by four of the five industry-run authorities.

The TSSA alone has more than 360 staff, about four times the number of employees who worked in the technical standards division of the Ministry of Consumer and Commercial Relations in the mid-1990s.

The authorities' staffs may be doing a good job enforcing their respective legislation, or there may be disasters waiting to happen. Certainly the traffic Sunrise Propane explosion of August 2008 suggests that the TSSA staff were operating within an inspection-and-enforcement environment that has serious systemic failings. But the point is, we simply don't know, because there is no transparency around their operations and no accountability to the people of Ontario.

It is OPSEU's view that the TSSA and the four other authorities simply do not serve the public interest. That is why we are here today.

We have reviewed the government's amendments to the legislation governing the TSSA, and in our opinion they simply do not go far enough to close the transparency and accountability gap. Yes, if the proposed government amendments pass, the Auditor General will be able to audit the TSSA, but no citizen will have recourse to the Ombudsman or be able to access TSSA records under the freedom-of-information and protection-of-privacy legislation.

The proposed amendments give the Minister of Consumer Services powers that the government should

already have in relation to the TSSA and all of the industry-run authorities, such as:

- to issue policy directives that TSSA has to implement;
- to enter into a memorandum of understanding on governance with the TSSA;
- to require reviews related to performance, accountability and governance; and
- to appoint an administrator to assume control of the TSSA if it is in the public interest.

I suppose that would be like appointing a supervisor to take over a hospital—if there are no disasters.

Another amendment gives the minister the power to appoint the TSSA's chair and vice-chair. This change does not address the basic problem: The 13 directors of the proposed corporation come directly from businesses under regulation. Therefore, they are in potential conflict of interest, as outlined above.

So, in OPSEU's view, the government's amendments do not address the root of the problem with the TSSA and all of the industry-run authorities: Industry comes first and the public comes second. This is a very serious problem for the people of this province, because the purpose of the legislation that the TSSA enforces is to enhance public safety.

Let's be clear: After this bill is amended, the TSSA would only have the clear authority to take action to limit, reduce or remove an imminent hazard to public safety, and require operators to pay costs. This directly reinforces the fact that the overall direction of these authorities is that industry comes first and public safety comes second.

As committee members will know, OPSEU represents the staff at the consumer services bureau in the Ministry of Consumer Services. They handle general complaints from consumers regarding the purchase of goods and services. Our members' loyalty is to protecting the public. They are not beholden to industry. Our members refer complaints from consumers about the regulated areas to the respective industry-run authority.

Consumers report that when they complain to the TSSA, the authority's number one concern is who will pay for the error that the consumer is reporting—sort of like what the Canadian Federation of Independent Business talked about.

#### 1630

A consumer will call the TSSA to complain about a contractor who is licensed by the authority. When they finally get through to a TSSA representative, they are typically told that the TSSA will go out and inspect the installation but will not take action against the contractor if they find the installation was done improperly. Consumers are told that their only recourse is to sue the contractor in Small Claims Court, according to the TSSA representative. And we have experience with that in our membership. The TSSA may then refer the consumer to the consumer services bureau, which has no regulatory authority over the contractor. Surely this can't be how the

government thinks public safety and consumer protection should be enforced in our province.

The whole point of regulating sectors such as boilers and pressure valves, elevators and amusement parks, and fuel storage and handling is to ensure that there are qualified and licensed contractors in the marketplace to provide a safe service. If they aren't doing that, the law should ensure that they are no longer in business, preying on consumers.

As one former OPSEU member said, "We knew who the crooks were and we made sure they were run out of town." This former member had worked for close to 20 years in the consumer protection branch before their work was handed over to the industry-run authorities by the Harris government.

Justice Dennis O'Connor, in his part 2 report of the Walkerton inquiry, very clearly called for effective government regulation and oversight to ensure a safe drinking water system. My union believes that that principle—effective government regulation and oversight—must apply in all areas of public safety. At the end of the day, the people of Ontario expect their government to ensure their safety, not a corporation managed by the very businesses under regulation. That is why the work of all industry-run authorities, including the TSSA, should be brought back into the Ontario public service.

I'm sure it comes as no surprise to this committee that our union makes this recommendation. But it is our firm belief that it is only by bringing this important regulatory work back under the direct oversight of our elected representatives that the public interest would be served. Thank you.

**The Chair (Mr. David Oraziotti):** Thank you very much for your presentation. We only have a couple of minutes for questions, so we'll start with Mr. Tabuns and do the best we can here. Go ahead, Mr. Tabuns. You had something brief.

**Mr. Peter Tabuns:** Thank you, Smokey. Thanks very much for coming in and making that presentation.

Could you enlarge a bit on the whole question of conflict of interest and the public good that we face here—how it is that companies are supposed to be guarding themselves against themselves in the marketplace?

**Mr. Smokey Thomas:** Well, I find it ironic. I'm a health care professional, and we try to get seats on the boards of governors of the hospitals. The NDP government did that in psych hospitals. We were told the reason is, "You're in a conflict-of-interest situation. You can't regulate yourself." We were just trying to bring our labour voice to the table, yet somehow you can take public safety here—and the Tories put it out to the private domain, and they're going to regulate themselves.

I've sat on boards of colleges where they let the very people running the kitchens and the cafeterias, making millions of bucks out of the system, sit on the board. Somehow that wasn't a conflict of interest, yet when they want to put me on there as a labour person, I was the only conflict of interest. So it really is hypocritical.

If I could add one little bit, whoever wrote the book on Reinventing Government, in my view, contemplated—

we never agreed with Reinventing Government, just so you know—getting out of direct provision of services but hanging on to the regulatory capacity. So you would contract out highway maintenance, yet a public servant, a public sector worker, would oversee those contracts. So that would be the due diligence for the taxpayer.

This move, when they did it, dumbfounded even us, because that went way beyond what Reinventing Government said.

**The Chair (Mr. David Oraziotti):** I'm going to have to stop you there. We need to move on.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. David Oraziotti):** Mr. Mauro, go ahead.

**Mr. Bill Mauro:** Thank you for your presentation.

I don't have a lot of time. A couple of things quickly: You spoke briefly about the role of the Auditor General, and I just wanted to put on the record that not only is the Auditor General being given powers of inspection on the financial situation, but he also has an ability to assess the effectiveness of the organization's policies and procedures, which would allow him, as we understand it, to deal with the safety side as well. At least that's my interpretation of it.

The other point I'd like to give you an opportunity to comment on is the establishment of the chief safety and risk officer that's contained within the legislation. It is a significant change, and it is an independent officer. We around here, all of us who do work in the Legislature, often talk about—I think there are seven independent officers of the Legislature who do not report to government but report back to the Legislative Assembly. This particular position would be an independent person not employed by TSSA but reporting to the board of the TSSA with a clear mandate of independence and safety. So I'm interested on your thoughts on that particular role.

**Mr. Smokey Thomas:** I wouldn't take the second job—not being employed by them but reporting to them—because I don't really see where there is any authority.

As far as the Auditor General—that's all well and good, and we see that as a good step, but we just don't think it goes far enough. We think taxpayers' dollars and public services are best held in this capacity in the public sector, with the government of Ontario actually doing the overseeing as well as the regulating. It takes all the conflict of interest out; it makes it neutral. That way, the TSSA or those member companies can't fire the person who's inspecting them.

Nursing home inspectors are still in the public service. Do you understand what I'm saying? It's just that inspection and enforcement should be a public sector performance. It takes all that conflict of interest out. And they have protections to be a whistle-blower. I can't use the name of the guy that I know, but there are contractors and people who work for the TSSA who say, "If we could speak up, we would, but we can't because we won't be employed." So it's fraught with problems.

Nurses aren't allowed to regulate themselves. The College of Nurses of Ontario is set up under regulation—



mind you, I have no use for the college of nurses; we call them “the headhunters,” but at least it’s much more accountable to patients. We pay a fee and everything else, but this TSSA is run by the industry; this is run by professionals.

**The Chair (Mr. David Oraziotti):** Thanks, Mr. Thomas. I have to stop you on that point. Mr. Mauro, thank you.

Ms. Munro, do you have any questions, briefly?

**Mrs. Julia Munro:** Yes. During the previous brief, which I believe you were here for, there were some questions brought up, particularly the question of accountability and the importance of having the Auditor General. The enhanced role that the minister would have, as contemplated by this piece of legislation—I just wonder if you care to comment on the role of the minister in regard to this piece of legislation.

**Mr. Smokey Thomas:** Again, I don’t know how many average citizens ever get to talk to a cabinet minister in the province of Ontario; I haven’t met very many.

It just simply doesn’t go far enough. It doesn’t bring it back to where it should be. Oddly enough, I agree with a lot of what the Canadian Federation of Independent Business said. I was sitting here, thinking—we were talking amongst ourselves, saying, “I can’t believe I agree with them.” I think where we might part company is that we still think it should be brought back into the public sector, and then you’d have absolute government control over all the regulations, all the enforcement, everything else, and a person, an employee, could actually go and shut a place down. They’d have that authority to come back to their bosses, make the recommendation and go and shut them down.

The charges out of that Sunrise inquiry—none were made under the TSSA that I could ever find; they were all made under other acts.

**The Chair (Mr. David Oraziotti):** Thank you. That’s the time. We appreciate you coming in today, and we appreciate the presentation.

**Mr. Smokey Thomas:** Thank you very much.

#### CITY OF TORONTO

**The Chair (Mr. David Oraziotti):** Our next presentation is the city of Toronto. Members, there’s just under 10 minutes for a vote upstairs. We’ll start the presentation. To our presenter: We might need to stop the presentation, and then we will come back and ensure that you have adequate time to have a full presentation, but I just want to make a point of that before we begin.

Welcome to the Standing Committee on General Government. State your name, and you can begin your presentation.

**Ms. Maria Augimeri:** Thank you. My name is Maria Augimeri. I’m a city councillor. I represent the ward in Downsview where the Sunrise Propane explosion occurred. Thank you for allowing me to come and speak on behalf of my community on this bill.

As you know, many of my constituents were forced out of their homes; 12,000 were evacuated that day, and over a year later, some have yet to return. This bill is a step toward what we need, but it doesn’t go far enough. The TSSA still remains at arm’s length and it still lacks the accountability and transparency we’ve cried out for. It doesn’t provide a safety net for communities like mine.

The TSSA, in its current structure, does not work. Giving power to the industry that it controls doesn’t focus exclusively on regulation and safety. We saw that in the November 2004 incident with a propane fire explosion in Bowmanville, which evacuated hundreds of residents and closed the 401 due to the landing of debris; and in the recent propane explosion at Murray Road on August 10, 2008, which not only closed the 401 but left many families to rebuild their homes.

The consequent audit by the TSSA in April 2009 resulted in the finding that of the 2,790 facilities that were audited, only 603 sites—that’s 21%—were compliant. What about the other 79%? About half of these, 1,335, were not even in operation, and 30 sites were found to have immediate hazards, all under the authority of the TSSA. This clearly indicated that significant and far-reaching measures must be taken, and bringing the TSSA under full government control should be the obvious option.

Bringing the TSSA back in-house, giving the ministry—any ministry—proper control would be taken as handing safety back to the residents and away from private interests, whose number one concern is ensuring a wide profit margin. This is what we want the government of Ontario to provide to its citizens.

Furthermore, Bill 187 does not permit local municipalities to govern the types of uses in industrial areas and does not permit municipalities to limit these uses when incompatible with nearby residential areas. In the mid-1990s, the provincial government defeated the old city of York and the city of Toronto on bylaws that would have allowed both municipalities to regulate propane storage located near residential communities. We want to do this.

This past summer, my office canvassed the community immediately adjacent to the explosion with a petition to bring the TSSA back in-house. Mr. Tabuns presented the petitions to the Legislature earlier today. The Downsview community is united on this front. To see to it that this devastation does not recur, we want and demand adequate oversight of the TSSA. I’ve brought copies of the petitions with me—they’re here—over 700 signatures from residents who want greater accountability and transparency when it comes to safety inspections. Keeping the TSSA as a private entity does not achieve that goal.

**The Chair (Mr. David Oraziotti):** Thank you very much for your time. We can start the questions with—

**Mrs. Linda Jeffrey:** Just take a break.

**The Chair (Mr. David Oraziotti):** Take a break? Okay. Mr. Tabuns?

**Mr. Peter Tabuns:** Before you break, just to the government party: There are three votes on this side. If you send three up for the vote, can we not continue?

**Mr. Bill Mauro:** I think we should all just go and come back.

**Mr. Peter Tabuns:** Fine, okay. It's just an offer.

**The Chair (Mr. David Oraziotti):** I think it's to give all members the opportunity to go upstairs. The committee is in recess. I'd ask members to come back as soon as the vote is over.

*The committee recessed from 1643 to 1651.*

**The Chair (Mr. David Oraziotti):** Okay, let's pick up where we left off, which was questions in the time remaining of your presentation. We have about nine minutes or so. Mr. Mauro will start.

**Mr. Bill Mauro:** Thank you for your presentation, and thank you for coming today. As a former municipal councillor myself, and I think many of us here are, we can certainly appreciate your position.

I wonder if I could hear your thoughts on the position of chief risk and safety officer that's established in the legislation, and the authority that position will have, should the legislation pass.

**Ms. Maria Augimeri:** The chief—

**Mr. Bill Mauro:** Risk and safety officer.

**Ms. Maria Augimeri:** I'm sorry; I can't comment on that.

**Mr. Bill Mauro:** Are you aware that the legislation, if passed, will establish a chief risk and safety officer?

**Ms. Maria Augimeri:** Yes, I read it, but I don't have enough expertise to comment on that.

**Mr. Bill Mauro:** No problem. Thank you.

The other question I would ask is that part of the response to the explosion was what was called the propane safety review. That review brought forward, as I understand it, 40 recommendations; 33 have already been implemented; two are legislative and are contained within the legislation—that will bring it to 35—and the others require a response from other jurisdictions. I'm told that the names of the people conducting the review are Birk and Katz, and it was actually quite extensive. As I said, most of what they've recommended has already been done, with the rest still to be done.

One of the things they're saying, in terms of safety, is that the TSSA and their staff themselves will have this enhanced level of authority that they can use. As it has been explained to me, should they identify safety concerns and safety risks, they can actually go in there and shut it down themselves. I wonder if you could talk to us about that.

**Ms. Maria Augimeri:** Yes, I have a very healthy respect for the panel members, and when I deputed before them, I found them to be quite knowledgeable and sensitive—I went with members of my community. I was very pleased in reading over the recommendations; however, the one obvious absence in their final argument was that they didn't recommend that the TSSA be taken back in-house. I went before them with seven recommendations; all of them were adopted and included in their final report. I was very happy with that, but this one wasn't. I understand why the other one about the municipality having the right to have oversight over the

amount of propane on a site when it's near a residential community is not in this particular bill. But this other piece that is glaringly omitted, which speaks to me of Walkerton and of all public safety, I think is an egregious error. It's the only thing they didn't do that I have terrible problems with and that my community has problems with; that is, taking it back in-house.

**The Chair (Mr. David Oraziotti):** Ms. Munro.

**Mrs. Julia Munro:** Since this bill doesn't contemplate that at this point—and I understand your concerns—I'm just wondering if there are particular areas of the bill that you would wish to see strengthened in light of the nature of the bill we have before us.

**Ms. Maria Augimeri:** Yes. I've looked at that, and the recommendations that I made before the panel, such as, for example—it's laughable but still serious—that propane handlers could, in the past, have been able to obtain their licences through the Internet, and things of that nature—that has been strengthened. The overview has been strengthened, and, I understand, the portion about the safety audits has been strengthened—all of that. So, to answer your question, no, I think that we're quite satisfied with the bulk of it.

However, this is a glaring oversight. I don't believe, and my community doesn't believe, on the whole, that when it comes to matters of public safety, industry ought to be able to govern itself. It doesn't make sense. And we've seen it happen over and over again here.

**Mrs. Julia Munro:** Thank you very much.

**The Chair (Mr. David Oraziotti):** Any further questions, Ms. Munro?

**Mrs. Julia Munro:** No, that's it.

**The Chair (Mr. David Oraziotti):** Okay. Mr. Tabuns, questions?

**Mr. Peter Tabuns:** Yes. Maria, thank you very much for coming in today and making your presentation. Could you talk a bit about the human-impact side of what happened to your community with the Sunrise Propane explosion?

**Ms. Maria Augimeri:** I think you've all read in the papers how many have been impacted, but there is one street that no one talked about, and that's Frederick Tisdale Circle. The majority of women who live on that street—it's a different community from the rest. They live on the military base, which is now known as Downsview Park. Their husbands are in Afghanistan. They had a whole other series of challenges to meet on that woeful day. They thought that we were being attacked. They thought that we were at war. Those were the people who were taken to hospital by ambulance. When you read about those reports in the paper, it wasn't the rest of the community: It's that one street.

The psychological trauma that those women and their children had to go through will not end. That will stay with them. I think that's the street that people forgot. Some of the women who ventured out afterwards—and it was very difficult for them to venture out—couldn't speak for a long time.

Their houses are now being torn down by the federal government because they need to make way for other housing. Some of the housing was too much in a state of disrepair to be built up again. So they have to start from scratch.

There are many casualties of that explosion that people don't know about, such as that particular one.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. David Oraziotti):** Thanks very much for coming in today. That concludes the time for your presentation.

#### COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

**The Chair (Mr. David Oraziotti):** Our next presentation is the Communications, Energy and Paperworkers Union of Canada. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you don't use, we'll allocate to the members for questions. So if you'd state your name, you can begin your presentation.

**Mr. Kim Ginter:** My name is Kim Ginter. I'm administrative vice-president of the Communications, Energy and Paperworkers Union. With me is Josephine Petcher. She's national rep.

CEP would like to thank the committee for this opportunity to comment on Bill 187, a bill regarding the Technical Standards and Safety Authority.

The Communications, Energy and Paperworkers Union of Canada was formed in November 1992 by a merger of three major Canadian unions with locals from coast to coast. CEP represents 150,000 workers across Canada. With approximately 50,000 women and men and almost 500 bargaining units, we are one of the largest private sector unions in Ontario. We represent over 5,000 members whose work falls under the TSSA.

Public and worker safety is of vital importance to us, and we welcome this opportunity to comment. We will address our issues with the bill as proposed, and close our comments with CEP's position on how public safety can better be protected.

The TSSA, which was set up by the Harris government to replace government regulatory activity in such important areas of safety risk as natural gas and petroleum, propane fuels and equipment, boilers, elevators etc., is a self-funded private company which falls under none of the laws which normally oversee a government agency's functioning and hold it accountable. The majority of the representatives on the board of the TSSA come from the very industries that they are supposed to be monitoring. The CEP believes that this places the authority in an immediate conflict of interest with the public it is supposed to protect.

**1700**

Unlike the private sector, governmental agencies are accountable to the public for the success and failure of their regulatory functions through oversight by the

provincial Auditor General, the Ombudsman, and the public entitlement to freedom of information. The government, of course, is accountable to the electorate. Unlike private sector bodies, government agencies and branches are often required to have multiple-stakeholder input into areas impacting on the public domain.

The government's proposed amendments concerning the TSSA in Bill 187 do virtually nothing to change the TSSA's lack of accountability and in fact seem more concerned with shielding the crown from any liabilities relating to the TSSA. The bill reiterates in great detail that the TSSA is a corporation—section 3.1 of Bill 187—that the corporation and its directors, employees etc. are not agents of the crown—subsection 3.3(1)—and that the crown is not liable for any actions or omissions of persons who are not agents of the crown—subsection 3.17(3).

It is the position of the CEP that the status of the TSSA as a private corporation increases risk to public and worker safety, which can only be reduced by bringing back the functions and responsibilities of the TSSA to public sector control and accountability. With the minor tinkering contained in Bill 187, the government is losing an opportunity to address underlying systemic issues that may have led to the Sunrise Propane explosion.

Inadequacy of Bill 187 to address safety concerns: What we've been hearing from our members on the ground is that since the TSSA was created, inspections in the industries falling under its mandate have greatly dropped. Because the TSSA is self-funded, it has to charge equipment owners and whistleblowers for carrying out investigations. If an employee calls the TSSA to report a safety risk, our members report to us that the main thing the TSSA asks is, "Who is going to pay for an inspection?" If the employer hasn't agreed to pick up the bill, the TSSA often won't do an inspection, although the safety threat hasn't changed. Bill 187 contains no amendments that would obligate the authority to increase its inspections.

Our members report that if they're lucky enough to get the TSSA to do an inspection, the TSSA usually sides with the employer. This should be no surprise, as the board of the TSSA is made up of industry representatives.

Bill 187 would allow the minister to alter the number of directors on the board of the TSSA and determine competency requirements—section 3.7. However, there is no requirement that the board reflect a broader range of stakeholder interests. The board can remain as industry-dominated as it was before. We would still be in a situation where the fox is looking after the henhouse.

Industry interests have inappropriate influence in other areas as well. The current administration agreement between the government and the TSSA requires the government to consult with the TSSA in making legislation or policy that relates to the industries that fall under the TSSA. Since the TSSA is made up largely of industry representatives, this means that industry interests have the dominant input into setting the health and safety

standards that affect the public and workers. Bill 187 expressly continues this existing administration agreement—subsection 3.15(3). This means that vested interests are determining public policy.

Another area of great concern to our CEP members is that the TSSA regularly grants variances from safety and environmental regulations to industry, allowing the use of equipment and practices that are considered to be a safety risk. For example, many construction companies etc. are given exemptions from having to predetermine where underground gas and water pipes are. As a result, there can be a lot of accidents when digging starts. We've had members killed from trying to patch up and fix broken gas pipes. This also places local residents at risk.

Another example of risky decision-making by the TSSA is that many owners and employers of everything from manufacturing plants to hospitals to schools successfully lobby the TSSA to get some of their boilers taken off line so that they can reduce their rating, and then reduce their staff or use less-qualified technicians, putting a bigger burden on the remaining boilers. Using underqualified technicians puts public safety at risk.

Unlike the government, the TSSA is under no obligation to give the public any notice of these variances, and there are very limited rights of appeal against these variances. Affected employees are not told when or why these exceptions were granted. The Propane Safety Review panel report of November 2008 criticizes the TSSA's practice in granting variances and recommends that the TSSA must "make clear to ... public safety authorities and other stakeholders the reason for the proposed variance." Bill 187 does nothing to implement this recommendation in any way.

Bill 187 does create a chief safety and risk officer to independently review the TSSA's activities, but as the officer is to be appointed by the TSSA, it is hard to imagine how the officer would be independent; that's section 3.11. Further, under Bill 187, this officer is not obligated to do anything following a review, but "may" prepare a report. If the officer does prepare a report, there are no provisions obligating the TSSA to implement any of the officer's recommendations.

Three other changes which also effectively continue the status quo include section 3.21, which states that the minister "may" consult with the TSSA and require the performance of various reviews; section 3.22, which states that the Auditor General "may" audit the TSSA; and section 3.23, which states that the minister "may" appoint an administrator to assume control of the TSSA if the minister believes it is in the public interest to do so.

As currently drafted, it would appear as if these various discretionary powers would be exercised as an exception and not the rule. As we've seen from the results of the inspection blitz after the Sunrise Propane explosion, which found many propane plants to be non-compliant with current safety standards, the TSSA has simply not been adequately monitoring and identifying hazards in Ontario.

Although the government claims that the amendments in Bill 187 will improve public safety, the bill, as drafted,

actually does nothing to strengthen the present inspection and enforcement functions of the TSSA. Bill 187 does grant inspectors the power to order a party to take measures to reduce imminent hazards—section 6—but this power is useless if you don't have sufficient inspectors to identify hazards or if your inspectors tend to side with the employer.

The CEP has been lobbying the government for years to bring the work of the TSSA back under government control and responsibility, most recently in a lengthy letter we sent to the Premier in December 2008 in support of an opposition motion to make the TSSA a government agency. Bill 187 does not do anything to increase the accountability of the TSSA or to decrease risks to the public and employees from these high-risk industries. It is the CEP's position that bringing back the functions of the TSSA to the public sector would much better address public safety concerns than Bill 187 as it is presently drafted.

This concludes our comments. CEP thanks the committee for this opportunity to comment on Bill 187, the TSSA amendment act, 2009. I submit this on behalf of Bob Huget, vice-president; myself, administrative vice-president; and Barb Dolan, administrative vice-president of CEP. Thank you.

**The Chair (Mr. David Oraziotti):** Thank you, Mr. Ginter. We have a very brief time for questions, but we'll try to get around to all members. Ms. Munro, quickly if you can.

**Mrs. Julia Munro:** Two quick things. First of all, I want to thank you for the depth of analysis of this presentation. I think it's very, very helpful for us as committee members.

My second quick question—well, first question: Is there training for propane handling available easily within the province? Where do people go to school to learn about—

**Ms. Josephine Petcher:** I'm not familiar with that. I'm sorry.

**Mrs. Julia Munro:** I just wondered if, in your work, you were aware of any kind of opportunity.

**Ms. Josephine Petcher:** Our workers are working less in propane than in other areas like natural gas and petroleum and dealing with boilers.

**Mrs. Julia Munro:** Okay. I appreciate that.

**The Chair (Mr. David Oraziotti):** Mr. Tabuns, go ahead.

**Mr. Peter Tabuns:** Kim, thank you for the presentation. You noted that some of your members have called TSSA to report unsafe conditions and have been told, in effect, "Unless someone's paying for this inspection, we're not going out there." How do they deal with that? How do they respond?

**Ms. Josephine Petcher:** The inspections are simply not done. That's the concern. I think that was also noted in the propane safety review report. There was, I think, a bit of an issue that if there is no method of funding, the inspections are going to be unlikely to be done. It's not addressed whatsoever in Bill 187. There's no provision

for funding of the TSSA; they are completely self-funded. So if someone isn't going to pay for it—and we find that employers are often not volunteering to pay for inspections and to look for safety failings—they are simply not done. There's no appeal mechanism. There's nothing we can do about that.

**Mr. Peter Tabuns:** Okay. Thank you.

**The Chair (Mr. David Oraziotti):** Mr. Mauro.

**Mr. Bill Mauro:** Kim, good to see you again as well. The last time was Atikokan, I believe—

**Mr. Kim Ginter:** Yes. Thank you, sir.

**Mr. Bill Mauro:** —an announcement up there, and it's moving forward, I think. It all looks pretty good.

I have just one question, as we have very little time. Short of bringing the TSSA back within control of the government, if that is not going to happen, what would you hope would be the one or a few significant changes or amendments that could be brought forward to the legislation that would enhance or provide you with a better level of comfort, I guess, if I could use that word, with the legislation?

**Mr. Kim Ginter:** I'll leave those answers to my colleague.

**Ms. Josephine Petcher:** If at this time it would not be possible to bring it back to the public sector, the

government wouldn't contemplate it, then if it could be brought under the same formal accountability framework that the public sector agencies or bodies would be subject to: the Ombudsman Act, freedom of information, Lobbyists Registration Act etc., to have strong conflict-of-interest guidelines and rules—not guidelines, actually; to have them be mandatory—and to have some sort of provision for funding. I think that if inspections and enforcement are not funded, it's not going to be done.

**Mr. Bill Mauro:** Thank you.

**The Chair (Mr. David Oraziotti):** Thanks for coming in today. We appreciate your presentation. That's the time we have.

**Mr. Kim Ginter:** Thank you.

**The Chair (Mr. David Oraziotti):** Just one last item, committee members, before we adjourn for the day. I'd just remind members of subcommittee report item number 8, that, pursuant to the order of the House, amendments are to be filed with the clerk by noon on Friday, November 27. Any amendments that are after that time on that day will not be accepted.

Thank you. Committee is adjourned.

*The committee adjourned at 1714.*





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