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Jeudi 26 novembre 2015

Standing Committee on Justice Policy

Employment and Labour Statute Law Amendment Act, 2015

Comité permanent de la justice

Loi de 2015 modifiant des lois en ce qui concerne l'emploi et les relations de travail

Chair: Shafiq Qaadri
Clerk: Tonia Grannum

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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 26 November 2015

Jeudi 26 novembre 2015

The committee met at 0903 in committee room 1.

EMPLOYMENT AND LABOUR STATUTE LAW AMENDMENT ACT, 2015

LOI DE 2015 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EMPLOI ET LES RELATIONS DE TRAVAIL

Consideration of the following bill:

Bill 109, An Act to amend various statutes with respect to employment and labour / Projet de loi 109, Loi modifiant diverses lois en ce qui concerne l'emploi et les relations de travail.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. As you know, we are here to consider Bill 109, An Act to amend various statutes with respect to employment and labour. We have a number of presenters scheduled throughout the day, and the protocol will be 10 minutes' opening presentation time, to be followed in rotation by each party, three minutes.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd welcome our first presenters to please come forward. Representing the Ontario Professional Fire Fighters Association: Mr. Santoro, Mr. LeBlanc and Mr. Howard Goldblatt. Please be seated, colleagues and gentlemen. Once you are seated, time will begin, and the time, as you know, will be enforced with military precision. Please begin. Do introduce yourselves. Time begins now.

Mr. Carmen Santoro: Thank you. Good morning, ladies and gentlemen of the committee. My name is Carmen Santoro. I am the president of the Ontario Professional Fire Fighters Association. With me today is Fred LeBlanc, 13th district vice-president of the International Association of Fire Fighters, and Howard Goldblatt, counsel to the OPFFA. I am pleased to join you this morning to comment on Bill 109.

The Ontario Professional Fire Fighters Association represents approximately 11,000 professional firefighters in 80 locals throughout the province. Affiliated with the International Association of Fire Fighters, the OPFFA has evolved into an organization whose primary purpose is to provide career firefighters with the highest level of service and expertise to assist them in all aspects of their professional lives.

The OPFFA is pleased to appear before this standing committee and to express its support for the passage of Bill 109 and, in particular, schedule 1, which addresses issues of fundamental importance for all participants in the fire services sector. As the first comprehensive review of the labour relations provisions of the Fire Protection and Prevention Act, 1997 since its passage, Bill 109 is fair and balanced and places professional firefighters and their associations on a level playing field with other organized workers in the province.

Bill 109 introduces, for the first time, comprehensive protections for professional firefighter associations, their officers and members, as well as for employers and employer organizations and their officers and members, from a variety of unfair labour practices such as interfering with bargaining rights, intimidating and coercing members because of their support for their organizations etc. These unfair labour practice provisions are identical to those which have been in place for decades in the Labour Relations Act, 1995 and its predecessors. Rather than being a radical departure, Bill 109 provides traditional and long-standing rights and protections to all participants in the fire sector. The OPFFA welcomes these changes.

Presently, only allegations that a firefighter association has violated its duty of fair representation towards its members are heard by the Ontario Labour Relations Board. Other violations of the current provisions of the FPPA, such as a claim that there has been a breach of the duty to bargain in good faith, must be heard in the courts, which is both expensive and time-consuming. Moreover, it has been long recognized that the courts are not particularly attuned to, or expert in, labour relations issues.

Under Bill 109, all of the enforcement provisions of the LRA will be made available to both employers and firefighter associations to support the proposed additional unfair labour practices. The OLRB and its officials will be able to address allegations with expertise and efficiency and provide for a much more expeditious and comprehensive means to resolve these disputes.

Most collective agreements covering professional firefighters in the province provide that firefighters must join and maintain membership in the firefighter associations as a condition of their continued employment. Firefighter associations will now be given statutory au-

thority to negotiate these union security provisions into their collective agreement under Bill 109, the same entitlement as other organized workers under the LRA.

Bill 109 also mandates the Rand formula, requiring that all employees pay union dues, be included in a collective agreement at the request of the firefighter association. This provision, which has a long history for both public and private sector workers under the LRA, demonstrates a further commitment by the government of Ontario to treat firefighters in the same way as other organized workers in both the public and private sectors.

The committee may be aware of the dispute over so-called two-hatters, which has attracted some scrutiny by the media and others over the last few years. Two-hatters are professional firefighters who work as volunteers in other communities, contrary to the constitution of the International Association of Fire Fighters, with which all local firefighter associations are affiliated. As a result, these firefighters have been sanctioned by the IAFF, and those who refuse to leave their volunteer positions face the possibility of being removed from their entitlement to union membership.

Bill 109 does not specifically address the two-hatter issue nor should it, since this is fundamentally an internal union issue. Nonetheless, the proposed amendments under Bill 109 will prohibit firefighter associations from seeking to have two-hatters who have lost their union membership discharged from their employment where, amongst other things, they have engaged in reasonable dissent within the association. In other words, under Bill 109, each such case will be examined on its own particular facts and will require careful consideration by adjudicators of the reasons underlying the attempt by the association to seek the discharge of these former members. Most importantly, the committee must appreciate that these same provisions have governed both public and private sector workers under the LRA for decades. In adding these provisions into Bill 109, the province has rightly chosen to treat firefighter associations the same as other organized employees and their unions under the LRA.

One of the ongoing frustrations faced by firefighter associations and their members is the delay in having grievances under their collective agreements heard and determined by impartial arbitrators. Bill 109, once passed, will provide firefighters with the same expedited arbitration process found in the LRA and under which discharge grievances can be heard in as few as 35 days from the date of the grievance and other grievances within 51 days of the grievance filing. The OPFFA is highly supportive of these amendments.

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As we have noted, there are over 80 municipalities in this province, of widely varying sizes, whose firefighters are unionized and represented by specialized, knowledgeable firefighter associations. While these associations have made steady progress towards improving the working conditions of those serving the public in this highly hazardous occupation, the labour relations provisions in the FPPA have lagged behind the rights, privileges and protections afforded other unions and their members. Bill 109, when passed, will redress this inequity in a manner that also provides rights, privileges and protections to employers and employer organizations.

Bill 109 also provides for amendments to the Workplace Safety and Insurance Act, 1997 in schedule 3. We would point to one such amendment in particular that addresses what the OPFFA has long considered to be an inequity in the way in which survivor benefits have been calculated.

The proposed amendment will permit the Workplace Safety and Insurance Board and its appeals tribunal to calculate survivor benefits on the basis of workers' average earnings of the deceased worker's occupation at the time of worker injury or diagnosis rather than in accordance with the statutory minima, as might otherwise be the case. The OPFFA strongly supports these amendments.

Thank you for the opportunity to share the OPFFA's position on Bill 109. I would be pleased to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Santoro. We'll begin our first rotation with the PC Party. Mr. Arnott.

Mr. Ted Arnott: Thank you, gentlemen, for coming to the committee today to speak about Bill 109. Let me first say that our caucus appreciates and values the work done by all of our firefighters in the province of Ontario, full-time and professional, so we appreciate your participation here.

Do you feel that your organization was adequately consulted in the drafting of Bill 109?

Mr. Carmen Santoro: Absolutely.

Mr. Ted Arnott: And you support it in full?

Mr. Carmen Santoro: Yes, we do.

Mr. Ted Arnott: Okay. You mentioned in the unfair labour practices and enforcement section of your presentation, "Other violations of the current provisions of the FPPA, such as a claim that there has been a breach of the duty to bargain in good faith, must be heard in the courts, which is ... expensive and time-consuming." Have there been numerous examples whereby those kinds of disputes have had to go to court to be resolved?

Mr. Howard Goldblatt: Mr. Arnott, there haven't been numerous examples, but one of the reasons—

The Chair (Mr. Shafiq Qaadri): Sorry, if you could just identify yourself first.

Mr. Howard Goldblatt: Sorry. I apologize, Chair. Howard Goldblatt, legal counsel for the OPFFA.

There have not been numerous examples. The reason for that is that in addressing the issue, we've had to advise with respect to both the time and the expense involved in going to court as opposed to going before the Ontario Labour Relations Board, where I can advise there are numerous examples of bad-faith bargaining charges being filed.

So it's been a deterrent in its current form. Just by way of example, the duty of fair representation also used to go

to the courts, and the Legislature felt it was appropriate to put that before the Labour Relations Board years ago, just bringing the rest of the unfair labour practices up to speed with that.

Mr. Ted Arnott: I would just like to conclude with a brief word on the two-hatter issue. As some members of committee might know, I initiated a private member's bill in 2002 supporting the right of volunteer firefighters to serve also as full-time firefighters in communities nearby where they lived.

Obviously, this bill does have an impact on that issue, and I want to express my appreciation to your organization for your willingness to move towards a position, I think, that is closer to the one that I expressed in 2002. I think it's in the interests of public safety that we ensure that there is some measure of legislative protection for two-hatter firefighters, so I want to express my appreciation to the federation for taking that position.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Welcome to Queen's Park. Thank you for all that you do. We're pleased to hear your deposition this morning.

Bill 109 addresses a piece of a bill that, actually, we brought in, Bill 98. There is a key difference—and I know that you are of course familiar with both. Bill 109 provides that retroactivity on awards due to occupational injury or illness would have had to have taken place on or before—

The Chair (Mr. Shafiq Qaadri): Ms. French, sorry, could you just aim yourself at that mike a little more? Thanks.

Ms. Jennifer K. French: Are you having a problem with my volume? I've never heard that before—on or after January 1998. I was just wondering if you could comment on that retroactivity piece and that specific date.

Mr. Carmen Santoro: I think the specific date you're referring to is before the act was put in place. It may or may not be relevant with this specific issue, but I'm sure that if the retroactivity was put in place years prior to it, it obviously would have some benefit to our members.

Ms. Jennifer K. French: And certainly the nature of occupational disease and its latency.

What does it mean to your members to have that peace of mind knowing that the plans that they've put in place—that their surviving spouses have access to a fair benefit and wouldn't be targeted based on retirement date?

Mr. Carmen Santoro: It's extremely important. I think the point that you're making is fair and it's extremely important because there are many surviving spouses who have not been treated fairly in the recent few years.

Ms. Jennifer K. French: Okay. Do you have a comment?

Ms. Cindy Forster: Have we got more time?

The Chair (Mr. Shafiq Qaadri): Yes. You've got a minute and a half.

Ms. Cindy Forster: So the rest of the bill under the Labour Relations Act would actually give you access now to expedited grievance arbitration. Can you tell us a little bit about what your experience has been with respect to how long it actually takes you to get through a process without having access to section—I don't know, Howard, is it 49, 51 or whatever? Is it 49 still?

Mr. Howard Goldblatt: Yes, it's the equivalent of section 49. It can take easily a year and a half to two years. When we're dealing with a discharge case, which are the ones that obviously need to be dealt with as expeditiously as possible. It's just an incredible source of frustration. It also affects the outcome at the end of two years because individuals are far more likely to take a bad settlement than wait the full two years because they are unable to support their families in that period. The result has been that expedited arbitration is universal across the province, except for firefighters, and it has worked extremely well.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster and Ms. French. To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I want to thank all of you for coming in today. The Ontario professional firefighters, I know, is a very important part of the service delivery in our province. We very much appreciate all of you coming in today and it's really great to see you here. I also want to thank you for the work that you do every day to ensure that we all live in a safe environment. I want you to know that our government very much appreciates the hard work that you do in putting your lives on the line every day for all of us. Thank you.

I found your presentation, Mr. Santoro, very, very revealing and very in-depth, so thank you for going through the various sections and talking about how each of them impacts on firefighters out there and on the ground. I'm more interested in finding out, in a more general sense, just what some of these provisions in Bill 109 will mean to a firefighter on the ground. We've talked about the various sections and how they relate to things, but how will some of this really impact and change the lives of a regular firefighter?

Mr. Carmen Santoro: I think, in a nutshell, it puts us on the same level playing field as other labour groups in all areas of the bill. I think that's been a long time coming, and we applaud this government for bringing us on the same level playing field as other labour groups. It means a lot to our firefighters.

Ms. Indira Naidoo-Harris: You talked about unfairness and you also talked at times about the hazardous conditions that your people work under. Explain to me how this bill will really ensure that any unfairness that may occur will no longer be possible.

Mr. Howard Goldblatt: I don't think it's a question of "no longer be possible." What it is, is it provides a method by which we can have these issues dealt with quickly and decisively by an expert tribunal. When those prospects arise, it significantly is a deterrent to those who

might otherwise take advantage of the lack of the provisions, which have so far been in the act. We see it every day and putting those provision in the act, frankly, as Mr. Santoro said, not only levels the playing field, but I think improves the atmosphere in which negotiations are conducted and general day-to-day labour relations are conducted.

Ms. Indira Naidoo-Harris: You talked about levelling the playing field. Do you feel then ultimately, in the end, that Bill 109 changes the playing field in a way that really enhances and allows firefighters out there to be able to get their jobs done?

Mr. Carmen Santoro: Absolutely. Absolutely. Thank you.

Ms. Indira Naidoo-Harris: I believe that might be my time. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris, and thanks to you gentlemen—Messieurs Santoro, LeBlanc and Goldblatt—for your deputation on behalf of the Ontario Professional Fire Fighters Association.

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SEIU HEALTHCARE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward, from Service Employees International Union Healthcare Canada: Mr. Klein, Ms. Buckingham, Mr. Carvalho and Mr. Spence.

Please feel free to be seated. Thank you. Please do introduce yourselves. Your time begins now—a 10-minute opening address.

Mr. Emanuel Carvalho: Good morning. My name is Emanuel Carvalho. I am the secretary-treasurer of SEIU Healthcare. I am joined today by Ainsworth Spence, a front-line worker at one of our hospitals, and John Klein, director of organizing. I'd like to start by thanking the committee for giving us the opportunity to appear before you this morning.

SEIU Healthcare advocates on behalf of more than 55,000 front-line health care workers in Ontario who work across the spectrum of care, including hospitals, nursing homes, retirement homes and out in the community. Our members are a diverse population, which includes personal support workers, registered practical nurses, RNs, health care aides and a variety of other front-line health care providers.

We are here today to speak specifically about schedule 2 of Bill 109 and what we consider to be positive amendments to the Public Sector Labour Relations Transitions Act. SEIU supports these amendments as we recognize the growing frequency of PSLRTA votes as a result of the continued transformation within Ontario's health care system. That is why the amendments to PSLRTA under schedule 2 of Bill 109 are not only timely, but we welcome and support this bill and what it means to the experiences of labour changes within their own workplaces.

I would like to acknowledge that there is not a uniform consensus among Ontario's labour unions about these amendments. However, we would like to point out that similar legislation—specifically, setting a minimum threshold of when votes in labour relations are triggered—has been successfully implemented and practised in several other Canadian jurisdictions for up to 20 years. For example, in 1996, the Saskatchewan government under the NDP Premier, Roy Romanow, enacted the Health Labour Relations Reorganization Act. This act dictates that in the case of a representation vote, a trade union will only be included on the ballot if they meet a minimum threshold of representing a percentage of the current health services providers.

By setting a minimum threshold—in the case of Saskatchewan, the minimum threshold is set at 25%—the government was able to foster a fair opportunity for unions to participate while limiting labour disruptions and inefficiencies, when reasonable. Moreover, the legislation, which was initially introduced by the NDP government of the day, has endured governments of various political stripes. Demonstrating stability, effectiveness and longevity, this legislation has not only respected the rights of workers but has also supported numerous health care transitions within the public sector.

SEIU recognizes the value that Ontario's labour relations transition legislation currently supports by enabling workers to decide which union should represent them. The proposed amendments in schedule 2 are designed to further ensure that the rights of employees across Ontario are protected and that PSLRTA votes are triggered only when reasonable and appropriate.

As you will hear from Ainsworth, our current use of PSLRTA mergers can cause additional unnecessary disruption in the workplace and lead to problems with morale that can remain long after the merger vote has concluded.

I will now pass it over to Ainsworth before concluding my remarks.

Mr. Ainsworth Spence: My name is Ainsworth Spence, and I wanted to start by thanking the members of the committee for the opportunity to share my experience and my opinion with you today.

The impact of the PSLRTA vote at my hospital was quite significant. With over 2,500 unionized workers affected by the vote, the interaction and activities from the various unions involved was not what I expected. What began as a notification that a small unit of workers was going to join my own existing unit quickly turned into something nasty and unexpected. I received a lot of information about the benefits of being a member of the various unions—more than that: I experienced an attempt by the unions to use this moment of uncertainty at my workplace as an organizing drive that involved spreading misinformation between co-workers.

As the daily campaigns proceeded, the emotional tolls on the workers became heightened. Months went on, and what was at first a positive union environment focused on delivering care turned into a workplace of distrust and divided factions amongst colleagues. Morale in the hospital was at a low. In the end, the result was what

everyone expected, but the community and camaraderie enjoyed by myself and my co-workers pre-campaign was forever changed, even two years after. I wish this proposed PSLRTA legislation would have been in place two years ago. My example, at a unit representing well above the base number in this legislation—it would have meant stability for my colleagues.

I am a proud health care worker, I am a proud member of the labour movement and I am proud to represent my union. I expect my union to participate in the democratic process, just as I participate in the democratic process. But I do not want my union fighting with other unions as a way of organizing in examples such as mine. When reasonable, I want stability in my workplace. I want my dues to be invested in fighting for a better future. If it were SEIU or any other union, I would expect this from them. I believe that working people expect this too.

Mr. Emanuel Carvalho: Thank you, Ainsworth.

In our view, Bill 109 aims to address experiences like Ainsworth's by fostering a more positive working environment. SEIU recognizes that the transformation in Ontario's health care system is just beginning. It is our position that our energy and our resources should be providing input on public policy to help our members continue to provide high-quality care to their patients during this period.

Not only do these particular PSLRTA merger votes create further instability in the workplace, but the campaigns leading up to the vote can be very costly. In many cases, significant union resources are allocated during these consolidations.

I'd also like to emphasize that Bill 109 is taking a fair and equitable approach to prevent one union from dominating a majority of the representation. If these PSLRTA amendments are passed, any and all unions currently representing workers in Ontario's health care system will continue to experience wins and losses on ballot votes at one point or another.

Finally, we'd like to address the misconception we've heard from various individuals and assure this committee that the democratic rights of workers will continue to be protected if these proposed amendments to PSLRTA are passed. For example, the Ontario Labour Relations Act already contains provisions that afford employees the opportunity to select a union in favour of another, or terminate a union's representation altogether. These rights already are well established and can be exercised more frequently at the sole discretion of the individual members. I would even venture to say that union members have more opportunities to exercise their rights to vote for or against a union than a general voter has in voting for politicians in this country.

The intention of Bill 109 is to reduce, only when reasonable, the disruption to workers during the time of transition while protecting their rights to be well represented. I acknowledge that not all unions agree with this legislation. Some do; some do not. Our union does support it. We would again like to thank the committee for the opportunity to speak to you this morning, and we look forward to some of your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Carvalho. We'll begin with the NDP. Ms. Forster?

Ms. Cindy Forster: Thank you, Chair.

Thanks for being here today and for bringing your comments on this piece of legislation. Was SEIU consulted by the government with respect to this schedule in Bill 109?

Mr. Emanuel Carvalho: Yes.

Ms. Cindy Forster: You were. And were there any discussions regarding what would happen in a situation where there were 60% non-union and 40% union? Would there then automatically be no union in that merger of that workplace?

Mr. Emanuel Carvalho: We in fact had many conversations about this piece of legislation. Our main focus was to ensure that our members' voices were heard. As you heard Ainsworth speak, getting away from the technicalities, what we were most concerned with was the relationship that our members had on the work floor after the winners become the losers during these representation votes. We were most concerned with the relationships that were left behind, the turbulence that was left behind in the relationships that I would venture to say, at the Niagara Health System, have probably taken over 10 years to rebuild.

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Worrying about technicalities and percentages, I think in this particular situation, we wanted to ensure that our members were protected first and foremost, and that as a union, we were exercising the rights of our members.

Ms. Cindy Forster: Did you have, though, a specific discussion about that particular scenario? Because there have been situations in mergers of hospitals where one hospital was non-union and another hospital was unionized, and the non-union side had more than 40%, so there were votes that took place. I just wondered if that discussion took place.

Mr. Emanuel Carvalho: Brigid?

Ms. Brigid Buckingham: Brigid Buckingham. I'm the head of policy at SEIU as well.

We understand that the legislation currently states 60%, but there could be further government regulations that could be introduced to revise that minimum threshold. Our preference would actually be, probably, to set it at about 75% as a minimum threshold, which states a clear majority at that point.

Mr. Carvalho had referenced the Saskatchewan model, where it was set at a minimum of 25%. Basically, what I believe the government has done is created enough flexibility—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Brigid Buckingham: —but the 75% would basically be the inverse of what Saskatchewan has currently been practising successfully.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. We pass it to the government side, to Ms. Martins.

Mrs. Cristina Martins: I just want to start off by saying thank you very much for being here today and for presenting, and thanking SEIU and the 55,000-plus front-line health care employees who work in our hospitals, long-term care facilities and home care agencies throughout Ontario. I represent the riding of Davenport and have many of your union members in my riding, and I know the fantastic work that they do through you. So thank you for that.

We talked a little about the threshold and the number not having been finalized just yet. I know that we're committed to working with our partners to finalize that number, to decide whether it is 60%, 75% or whatever number that is; and that we will be working with everyone to set out that threshold through regulation.

I guess my question is for Mr. Spence, and thank you so much for sharing your experience. Can you go into greater detail about how these amalgamating votes have changed your workplace? What was it like? Is this proposed piece of legislation going to streamline the process? Are you going to see better conditions in your workplace? You talked about the negative morale and the negative workplace environment. How do you see the workplace changing with all of this?

Mr. Ainsworth Spence: Well, I think it was more so the results of what happened because of the PSLRTA. If we had some mechanism in place where a workplace as big as Sunnybrook hospital had to go into a fight with relatively less than 10% of an outside unit—that actually came in and pretty much disrupted the actual relationship that went on at the hospital.

As an outsider, you're trying to come in and you're given different promises and different offers; and obviously, as human beings, we're going to be enticed. Because that happened, a lot of members didn't necessarily get what they wanted and didn't actually benefit from those promises. So at the end, when they say you won, it actually created, literally, a toxic environment in terms of relationships.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mrs. Cristina Martins: So you see this particular part of legislation actually eliminating some of that toxicity and making sure that there is a more positive workplace environment.

Mr. Ainsworth Spence: Most definitely. Most definitely.

Mrs. Cristina Martins: Okay. Well, thank you very much once again.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. To the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation this morning. I want to express my appreciation as well for the work that your members do in the health care system in the province of Ontario.

Judging by the recent statements of the Minister of Health, we can anticipate that there will be some mergers in the offing in the next few months, perhaps in the next year. This is an issue that's looming. You're expressing support for this provision in Bill 109 that would end these merger-driven representation votes, and you've acknowledged that some of the other unions that have an interest in this issue have expressed opposition.

You said it's a very costly process. Can you explain to the committee members how these votes are undertaken, what they cost, how long they take and what those related issues are?

Mr. Emanuel Carvalho: Thank you for the question. I think that the experience that we've had in the past has allowed the Ontario Labour Relations Board to kind of set a pattern for how votes are conducted. There's almost a standard template now. There's a long process. I just think it's important that people understand that we don't understand what the employer is going to do on the other side, so we don't know what the spectrum of a vote looks like on the front end.

What we do know is that once it starts happening, there are a lot of legalities that happen on the front end. There's a lot of time consumed with lawyers arguing positions, bargaining rights and all kinds of different things to ensure that our bargaining units are protected. Once that process is somewhat exhausted—again, that can take anywhere from months to a year to come to a conclusion. Once that is concluded, then there's, I believe, a standard template of a two- to three-week campaign phase where both sides—or three sides or four sides, depending on the size of the amalgamation—come and have open access to all sites, and they have their own campaigns. That, again, involves more staff resources, more member resources, more time dedicated specifically to union representation votes, as opposed to bargaining and protecting members' rights.

So to that question, what you're asking, that process is not something that I could say would take a month, a year or X amount of dollars. In fact, that's a flowing number that can be quite expensive.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Ted Arnott: Well, thank you very much for that answer. Is it not true, though, that after a democratic vote takes place there is greater acceptance of the outcome in the workplace?

Mr. Emanuel Carvalho: I think my friend Ainsworth Spence spoke to it. I can speak to my own experience as a union leader and an organizer on the ground, and I think I made the comment earlier to my friend that when there's—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott, and thanks to you, Mr. Carvalho, Mr. Klein, Ms. Spence—

The Clerk of the Committee (Ms. Tonia Grannum): Mr. Spence.

The Chair (Mr. Shafiq Qaadri): —Mr. Spence—for your deputation on behalf of the Service Employees International Union.

CHRISTIAN LABOUR ASSOCIATION OF CANADA

The Chair (Mr. Shafiq Qaadri): I would invite our next presenter to please come forward: Mr. Ian De

Waard, representing the Christian Labour Association of Canada.

Welcome, Mr. De Waard. You've seen the protocol: 10 minutes of opening comments to be followed by questions in rotation. I invite you to please begin now.

Mr. Ian De Waard: Thank you, Mr. Chair and members of the committee, for the opportunity to provide CLAC's perspective on Bill 109. My name is Ian De Waard. I'm a regional director for CLAC.

CLAC is an independent, multi-sector, all-Canadian union in Canada and is one of the fastest-growing unions in the country. Founded in 1952, CLAC now represents over 60,000 members, 15,000 of which reside in Ontario. Provincially, our members serve in the health care sector, in construction and as volunteer firefighters.

We're here today to discuss all three aspects of this broad piece of legislation and to provide the perspective of our members on the changes that are being debated in the Legislature.

First, with respect to schedule 1, the Fire Protection and Prevention Act: CLAC's 1,200 volunteer firefighter members serve mostly in cities that were amalgamated between 1998 and 2000. In these large, more complex municipal structures, volunteers can find it difficult to be heard as a stakeholder group. So while the concept of a union for volunteers can seem oxymoronic, in fact collective bargaining can enable them to better coordinate their voice, and it creates a forum in which to effectively engage municipal decision-makers.

CLAC's volunteer firefighters are not covered by part IX of the Fire Protection and Prevention Act, but we support the changes that this bill brings. These changes to the FPPA are adopted from the Labour Relations Act and can be understood as simply extending protection and tools that have been already well established in industrial relations in Ontario.

0940

My comments about this part of Bill 109 will focus on section 52.2, which is found under the title "Permissive provisions." Among other things, this section formalizes the ability to establish a closed shop union. I say "formalize" because closed shop unionism is not new to the fire service; it's just that the FPPA does not currently reference a framework for such union structures. This section, just like is done in the LRA—the Labour Relations Act—will ensure that a union cannot use its authority to unreasonably deprive someone of union membership in order to cause that person to be discharged from or denied employment as a firefighter.

It is CLAC's view that this addition will offer long-awaited protection for two-hatter firefighters in the province. A two-hatter is someone who is employed as a full-time firefighter in one municipality and who also serves in their spare time as a volunteer firefighter in another, usually their hometown. Over the past 15 years, the union that represents full-time firefighters has threatened to expel from membership anyone who is caught volunteering, which in turn means the loss of their full-time firefighter employment.

CLAC has made repeated calls for a legislative solution over the years, and efforts to protect two-hatters have been before Queen's Park before. We're very pleased to see that this bill seems to finally offer two-hatters protection, and that the government is prepared to act boldly on what has been a contentious issue.

However, we do wish to also raise a word of caution. As I've already mentioned, the language in this section is exactly as it's found in the Labour Relations Act, but we can find no jurisprudence that would help us anticipate how this text would be used in a case of a two-hatter. There is likely no situation in a workplace covered by the Labour Relations Act that is analogous to the issue that two-hatters have faced.

With that in mind and in order to ensure that language from the Labour Relations Act is sufficient for use in this FPPA context, we suggest one addition. Section 52.2(2) is found under the heading: "Where non-member firefighter cannot be required to be discharged." At that section, we ask you to consider adding to the scenarios listed there:

"(h) serves as a volunteer firefighter for a fire department not operated by the employer."

That, if used as the basis for expelling someone from membership, could not be used as the basis for causing that person to be terminated, if you were to adopt that language or something like it.

In Ontario today, there are 19,000 volunteer fighters, serving in 423—or 93%—of the province's fire departments. The greatest challenge facing these departments, in our experience, is attraction and retention. Two-hatters have, in the past, been able to offer their expertise and the transfer of knowledge that experience and training have provided them. That knowledge and experience can be of immense value, so we urge that this schedule of the bill be made into law and, if practical, we suggest that you strengthen its text so that the intention to protect two-hatters will, in future, be irrefutable before any court or tribunal.

Moving on to the Public Service Labour Relations Transition Act: The proposed changes to PSLRTA have brought our leadership team at CLAC a great deal of concern. Our union has long been a proponent of ensuring that workers can democratically and collectively choose the union that represents them. The collective power of the workers to build better a workplace community is enhanced, not diminished, when workers can freely elect to join, retain or displace the union that represents them.

CLAC does not support the change in this section of the bill. It permits that a unilateral decision to amalgamate workplaces in the broader public sector will cause an automatic change in bargaining agent. When one of the groups is not large enough, this change will take place with no regard for the will of the affected workers. In our opinion, this amendment undermines a basic freedom of association, an essential right and Canadian value.

During the course of the debate on this bill, we have heard from members of the governing party that this

change is about eliminating a redundant step in the process of rationalizing or amalgamating public services. We do not accept that a vote to choose a bargaining agent is redundant and we don't believe that this essential freedom of association should be taken away from workers.

As with general elections, the decision to join a particular union is made on a specific day and the prize goes to a particular winner. Such a decision represents the will of that workforce in that place and time, and this collective decision should be binding until or unless the workforce—the members—chooses another union or chooses to become non-union, if that's their will. The critic from the third party—Ms. Forster, I believe—in the course of the debate raised an example of a bargaining unit with 100 members that was successful in an amalgamation vote against a union with 10 times that number. This is a fantastic example of workplace democracy and union accountability.

The act of democratically choosing a bargaining agent is an important exercise in building a strong, healthy union movement. CLAC experienced this itself last year when Hamilton Health Sciences absorbed the West Lincoln Memorial Hospital in Grimsby, Ontario. Workers at this small community hospital had been represented by CLAC for more than 20 years. Those members did not want a change in representation or to forgo the collective agreement that they had worked hard to develop and to craft for their particular workplace. In the end, our members were absorbed into that other union, but only after a legitimate campaign for choice, and after having had the opportunity to fairly cast their vote. It was not a perfect outcome and CLAC has made some suggestions to address this kind of scenario in the future, but these suggestions are beyond the scope of this bill. In that case, the electoral process was democratic and the members have accepted the result because they were entitled to the process.

We ask that the members of this committee, and the members of the governing party in particular, take the opportunity afforded them in this process to pass an amendment to strike schedule 2 from the bill.

Lastly and briefly, some comments with respect to the Workplace Safety and Insurance Act in schedule 3: There is some ground here where there's more consensus, and CLAC is pleased to see these positive steps to improve protections and benefits for workers. We support these measures because they provide greater protection to workers and stiffer penalties for those who would seek to penalize or threaten for reporting a workplace injury.

Further, we applaud the changes to the assessment of net average earnings of a deceased worker. When a tragedy at work takes a life, it's important that the policies and procedures in place for determining compensation for surviving loved ones and dependants is fair. The changes proposed in this section of the bill provide greater certainty that this will be the case and will address unfortunate cases that have occurred since 1998.

In conclusion, I want to thank the members of the committee for the opportunity to speak to this bill and would welcome any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. De Waard. We'll begin with the government side. To Mr. Thibeault.

Mr. Glenn Thibeault: Thank you, Mr. De Waard, for being here today and for your presentation. It was informative and I was very interested in hearing some of what I guess you would call and I would call friendly amendments when it comes to the two-hatters piece.

But I'd like to move on to the PSLRTA piece that you were talking about. I know we had our friends from SEIU Healthcare presenting before you, and I believe it was Mr. Klein who was talking about how the democratic rights of workers will be protected with this new schedule. He also used the words "only when reasonable and appropriate" quite often.

We also have a letter here from the president of Unifor—and I know we only have three minutes, so I'm not going to read the whole thing. In this letter, Mr. Dias says, "Unifor accepts that this measure is a reasonable and practical approach to curtailing some of the regrettable mischief and turmoil caused by these PSLRTA campaigns—subject, of course, to what that prescribed percentage would be." He continues to go on—

Ms. Cindy Forster: Point of order.

The Chair (Mr. Shafiq Qaadri): Not really acceptable at this time, but go ahead, Ms. Forster.

Ms. Cindy Forster: We don't have a copy of the letter from Unifor that the member is referring to.

The Chair (Mr. Shafiq Qaadri): While unfortunate, I'm not sure that has any bearing on the current—was this distributed at this committee?

Mr. Glenn Thibeault: I just have a letter from—

The Chair (Mr. Shafiq Qaadri): I think Mr. Thibeault, as a citizen of the country, is allowed to be in possession of any letter he wants. If this was not distributed at the committee, it's irrelevant for your comment.

Please continue.

Mr. Glenn Thibeault: Thank you, Chair.

It continues on: "In addressing Bill 109, our unions have a clear choice—division amongst unions with some embracing Bill 109 while others launch partisan attacks to preserve the right of a union under any circumstance to compel a vote. Or, as in other jurisdictions, we as unions can in unity adopt a fair and reasonable limit in these future PSLRTA campaigns, whether through a formal consensus amongst our unions or through input into Bill 109."

So what would you disagree with in terms of what SEIU and Unifor is saying in relation to this?

Mr. Ian De Waard: Democracy is always messy, but when you deprive the workers of the chance to cast a vote as to who or which bargaining agent has the authority to represent them, you undermine a fundamental freedom that should not be lightly dispelled with.

0950

I would just point out that in a hospital setting, as an example, management deals with a multiplicity of unions on any given day. So the notion that having multiple unions in most complex work environments is un-

manageable, I think, is untrue, as the current state would bear out. In the case of the West Lincoln Memorial Hospital, they had a collective agreement that they'd worked out over a generation that was unique, in particular, to that environment that's been lost to them.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Ian DeWaard: We would ask that this not be the solution for making PSLRTA work more effectively. We would ask that you remove the schedule.

Mr. Glenn Thibeault: Thank you.

The Chair (Mr. Shafiq Qaadri): Just for clarification: If a communication is received, obviously, to the committee Clerk, to the committee, that is by protocol to be distributed to each member of the committee and to each caucus. If a private communication has been made, that is under different rules. Having said that, Mr. Thibeault, it appealed to you, and I think I've seen members of the government already distribute it, so hopefully that situation is now remedied.

We now move to the PC side. Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation this morning, and thank you to your members for the good work that they do in the province of Ontario. I want to express my appreciation, as well, for the support that your organization gave to my Bill 30 back in 2002, when we had public hearings on my legislation to protect two-hatter firefighters.

Yes, I've interpreted Bill 109 in a similar way that you have, that this is some measure of legislative protection for two-hatter firefighters. Again, you explained what those are. Those are typically full-time, professional firefighters who work at a city department but may volunteer in their hometown on their days off. I have stood up for their right to volunteer in their home communities, enabling those local communities to have a higher level of community safety as a result of their training and their expertise. I continue to maintain that's very important in terms of public safety for rural Ontario. I'm glad that you agree.

But you're also suggesting that there needs to be more clarification in terms of an amendment, and I would ask the government members to take that back to their respective staff to consider. I think if, indeed, the government is making a step to protect two-hatter firefighters, we need to make sure that those steps are going to be effective and achieve their desired result. So thank you for that suggestion.

You indicated that there is no jurisprudence that would anticipate how the text will be used in the case of a two-hatter. Can you explain that a little bit more; what review you did and what you found?

Mr. Ian DeWaard: Sure. I asked our inside legal counsel to do a bit of research on where the correlating piece of the Labour Relations Act, the exact language, has been used. The examples that were there did not mimic the kind of scenario that a two-hatter faces. So a two-hatter—his own union is expelling him because of the things that he's doing in his spare time, in his off-time. I could find no example of a bargaining agent having caused a worker to lose his job because of things that were done outside of the workplace.

Mr. Ted Arnott: And of course, the other reality is, I think virtually every province in Canada has some measure of legislative protection for two-hatters. Is that not correct, as far as you know?

Mr. Ian DeWaard: Yes; most. Please don't ask me to list them.

Mr. Ted Arnott: Yes, I think that in 2002, that was the case, certainly, in the review that I had received, with the exception, perhaps, of Newfoundland. But all across Canada, there was legislated protection. So again, here we sit 13 years later and it's about time that the legislated protection was extended to the two-hatter firefighters. Thank you again for expressing support.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Ms. French.

Ms. Jennifer K. French: Thank you very much for joining us this morning. I have a number of quick questions for you.

First, were you formally consulted by the government during this process, specific to schedule 2?

Mr. Ian DeWaard: We were not consulted on schedule 2, no.

Ms. Jennifer K. French: You were not consulted on schedule 2.

Mr. Ian DeWaard: We had opportunity to consult and give insight into some pieces of the bill.

Ms. Jennifer K. French: Okay. Thank you. I appreciate your submission, but many of your comments, specifically that this amendment undermines a basic freedom of association or an essential right and Canadian value.

One of the things that you did say is that you've seen there not be a perfect outcome. Have you ever seen a perfect outcome with the democratic process?

Mr. Ian DeWaard: No.

Ms. Jennifer K. French: No, no. I'm reminded of a recent federal election, and I recognize that in the wake of that, there may have been some transition and morale issues, but ultimately, as you have said—

The Chair (Mr. Shafiq Qaadri): It seemed perfect to us, Ms. French.

Ms. Jennifer K. French: —accepted the vote, because they were entitled to it. Some of us are still working on the acceptance piece. But I will go on, as it is my time.

I did want to ask, though: Do you see that there's an opportunity, potentially, if there is always, as you've put it, a unilateral decision to amalgamate workplaces—that that would trigger an automatic change in the bargaining agent? Could you imagine a scenario where you see a merger coordinated so that there is an outcome that is already predetermined? Could you imagine that scenario? If you always know who the winner will be, to coordinate an opportunity to—

Mr. Ian De Waard: I'll try. I'm not sure I understand the question exactly, but there's a great model for how to deal with mergers, acquisitions and sales in the private

sector for labour relations, and that's a good model. It works. There are certain criteria that need to be met before there is an amalgamation of bargaining units. So what happens on the corporate side will inform, but doesn't necessarily predict, what's going to happen on the labour relations side.

That's a better model, so we've made submissions in respect of a three-part test that would be mimicked on that and what we think would be better suited for the sector, but as I understand it, it's not part of the scope of this bill.

Ms. Jennifer K. French: Okay. I guess my question was, I could imagine there being the potential that if there was a merger that could be coordinated to have a certain outcome happen—if there was going to be a union that you knew would win and a union that you knew wouldn't—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Jennifer K. French: —that might be an interesting merger to coordinate. Is that—

Mr. Ian De Waard: In a case like that, where bargaining agents are displaced or changed, a collective agreement is displaced, changed or forgone, the workers should have ultimate say as to which bargaining agent and collective agreement is retained.

Ms. Jennifer K. French: Not the government?

Mr. Ian De Waard: Yes.

Ms. Jennifer K. French: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French.

Just before dismissing you, Mr. De Waard, I just want to comment once again on Ms. Forster's request. You've received, I hope, the Unifor letter. As far as we can determine, it's not actually addressed to the committee, but you are within your rights to ask for a copy. I'm glad that the obliging parties have communicated this to you.

Thank you, Mr. De Waard, and thanks to committee members. We're in recess till 2 p.m. this afternoon.

The committee recessed from 0957 to 1405.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy back to order. We are here, as you know, to consider Bill 109, An Act to amend various statutes with respect to employment and labour.

We'll have our first presenter please come forward: Mr. Warren "Smokey" Thomas, president of OPSEU. As you've seen, the protocol is 10 minutes in which to make your initial presentation, to be followed by questions in rotation. Welcome, colleagues. Your time officially begins now.

Mr. Smokey Thomas: Good afternoon, and thank you for the opportunity to speak today on Bill 109, the Employment and Labour Statute Law Amendment Act. My name is Smokey Thomas and I am president of OPSEU. With me today is Ed Ogibowski. He's our supervisor of organizing for OPSEU.

OPSEU represents more than 130,000 members in the Ontario public service and in the broader public service. You will be familiar with the work our members perform on behalf of the people of Ontario. Hospital lab services, long-term-care facilities, developmental service agencies, colleges, the LCBO, children's aid societies, corrections facilities and emergency response services are just a handful of the workplaces where you will find OPSEU members doing their jobs every day. I'm proud of the work they do and I'm proud to represent them.

I'm with you here today to talk about the proposed changes to the Public Sector Labour Relations Transition Act, 1997 as they are contained in Bill 109. Our comments today are limited to the changes proposed in schedule 2 of the act.

We're not happy with what the government has in mind, and I'll get to that in a moment. Before that, what I wanted to talk about is what is called "workplace democracy." The term "workplace democracy" has various definitions. In some cases, it's the term used to describe how managers and employees come to an understanding and how decision-making is conducted in the workplace. The idea is to replace a top-down management style with a more collaborative and consensus-driven work environment through measures to create a stronger and more productive business or enterprise.

When applied to organized labour itself, however, workplace democracy is not the same. In my world, workplace democracy takes on a different meaning. Workplace democracy means empowering workers within their union. It means giving workers the right to elect who they want to represent them within their union and giving them a strong voice in their relationship with management or the government of the day. It means electing stewards who will bring problems to the attention of management with the aim of remedial action. It means giving workers the right to elect individuals who will represent them and direct their local position on issues to the highest levels inside the union, such as what we find at OPSEU's annual convention.

In the context of Bill 109, it means giving workers the right to elect whichever union they might prefer to represent them through a merger vote. We're all familiar with the term "merger vote"—I hope we are—and it's pretty straightforward. Merger votes occur when two or more unions represent employees who work for a single employer. The employer or either of the unions can make an application to the Ontario Labour Relations Board to have the employees decide for themselves which of the competing unions should represent them. That's the key: giving employees themselves the right to choose which union might best represent their interests.

As I speak, there are merger campaigns going on by competing unions across Ontario. These campaigns are attracting little fanfare because they are routine exercises conducted by organized labour to settle representation issues. Some of these ongoing campaigns include a union

merger at Ross Memorial and Peterborough hospitals, a union merger at St. Elizabeth crisis and Canadian Mental Health Association in Peel region, a union merger at St. Joseph's Care Group in Thunder Bay, and a union merger at the Providence Care hospital in Kingston. In fact, Providence is my place of employment and I'll be voting in a merger vote there sometime next spring. There are several others happening across the province. Nobody outside organized labour pays much attention to these merger votes because they're a well-established practice in a workplace democracy.

I would like to think that all of us in this room would agree that workers, no differently than voters at large in a general political election, should be entitled to decide for themselves who they want to represent them. But regrettably, that is what Bill 109 wants to take away from workers: the right to elect the union of their own choice. Bill 109 would do so by setting an arbitrary benchmark of 60% to determine whether or not a merger vote should be conducted. In other words, if one of the competing unions already represents 60% of the overall unionized workforce, then no merger vote would be held. That's wrong and it's undemocratic. It would be like saying, "Such-and-such political party got the support of 60% of the vote in the last election, so we'll take a pass on having an election this year." Obviously, that would be wrong and undemocratic and nobody in this room would stand in favour of it, let alone the public at large.

1410

In effect, that is what Bill 109 represents when it comes to workplace democracy in a unionized shop. Workers will be denied due process in electing their union representation if one union happens to represent more than 60% of the combined unionized employees.

Some unions, like CUPE Ontario and the Ontario Nurses' Association, share our serious concerns about Bill 109. Together, our three unions represent more than 150,000 employees inside Ontario hospitals and we have the greatest experience in organizing merger votes. And yet we find the government lining up support from other unions with relatively little experience in merger votes. In my view, they're on the wrong side of history on this one.

I've been told by some of those union leaders that Bill 109 will curtail "mischief and turmoil"—that's a quote from a leader—"caused by merger votes." They say that if an incumbent union enjoys representation from 75% of the combined workforce, then it "obviously commands the overwhelming advantage." They go on to argue that the other minority union is put in a "desperate and untenable position that can lead to bitter and lingering division and resentment among affected workers."

In my experience, these sweeping generalizations don't match what goes on on the shop floor. If there is a risk of "mischief and turmoil," it will occur when workers discover that their right to elect their union of choice is suddenly snatched away by Bill 109.

By lining up behind the government on this bill, these union leaders are exactly undermining workplace democracy and expressing their opposition to workers to think and act for themselves in their own self-interest. I say this because the bill says nothing—nor should it—about which union is best equipped to negotiate collective agreements and then enforce them. That is best left to the workers to determine for themselves. It shouldn't be decided by legislative fiat.

In my long association with organized labour, I've seen many examples where one union held a strong majority of members going into a merger vote, only to end up on the losing side. These labour leaders smugly thought they had victory in the bag, only to discover their own members had delivered a referendum on their own shortcomings when it came to negotiating strong and enforceable collective agreements. Why so? Because voting workers concluded that the so-called smaller union enjoyed a track record of delivering stronger contracts with the best enforcement results, all the while guided by superior staff resources.

Bill 109 is silent on other aspects of merger votes. What happens when, say, 60% of the workforce in a hospital is made up of non-union members? Does this mean there is no vote at all? Do the 40% unionized lose their union? That runs contrary to the Constitution of Canada.

Let me conclude with this: Bill 109 represents a pivotal struggle over the place that democracy occupies in the workplace. The safeguards we currently enjoy when it comes to merger votes must not be watered down. Workers must maintain their right to make their own choices through a free and fair election process. That is the flaw at the heart of Bill 109: It disenfranchises working people in their own workplace. So we hope you will take that section out in its entirety.

Thank you, and we'd be happy to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Thomas. We'll begin with the PC side, three minutes. Ms. Scott.

Ms. Laurie Scott: Thank you for coming here and representing OPSEU, and thank you for all the good work that your members do. I used to be a member of the Ontario Nurses' Association myself.

You've spoken a lot about the 60% threshold. Can you explain the non-union part of the 60% and why you think partisan politics may be at play? Can you elaborate on that?

Mr. Smokey Thomas: It's silent in the act, but the interpretation my lawyer gives me is that if it was 60% non-union and 40% union, then the union just loses and the whole place becomes non-union. That leaves it open to all kinds of creative thinking, if you will, on the part of management and mergers. So yes, that would take away a person's union in its entirety, and that's contrary to the law of the land.

Ms. Laurie Scott: That's excellent. I know that my colleague Mr. Arnott has a question.

The Chair (Mr. Shafiq Qaadri): Mr. Arnott.

Mr. Ted Arnott: Yes, just to follow up: Thank you for your presentation. I thought it was very interesting.

You make some strong arguments in favour of maintaining these merger-driven representation votes that we've had in the past, I think, but it's no secret that within the trade union movement there is some dispute about this issue.

We heard a presentation this morning from SEIU Healthcare. I think they would anticipate that there's going to be a substantial number of mergers in the health care sector going forward, based on some of the recent comments by the Minister of Health. They say that the merger votes are very costly to them because there's a lot of litigation leading up to it. Could you explain what it costs your organization, your union, when you have to go into one of these situations—

Mr. Smokey Thomas: Well, they must be broke. The cost is minimal. What happens is, there's a meeting beforehand with a labour relations officer—who gets paid, anyway, by the government. It takes about a day.

Mr. Ed Ogibowski: Yes.

Mr. Smokey Thomas: There have been so many of these done that there is now just a template. You get a prescribed time that you get access to the hospital; you can hold information meetings, and you can have tables with information.

The cost, even to my union, is negligible, and to the employer, it's nothing. To the government, it's the cost of maybe a day—or if there are disputes, maybe two or three days—of a labour relations officer's time, and that's what they do for a living.

Mr. Ted Arnott: The template has to be agreed upon by both parties, I assume, so that would lead to some disagreement—

Mr. Smokey Thomas: It all came about back in the 1990s, when hospital restructuring was first started. Their unions sat with the employers and basically—one of my staff members, a guy named Bob Cook, was the lead negotiator; he was the talking head for the unions—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Smokey Thomas: —and this process was designed by unions and the government. It has stood the test of time, so there's no point in changing it now.

Mr. Ted Arnott: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. To the NDP side, to Ms. Forster.

Ms. Cindy Forster: Thank you for being here. The PSLRTA actually applies to 444 municipalities, 72 school boards, 90-plus hospital systems, 14 CCACs and 500 nursing homes—hundreds of thousands of employees—at a time when the government continues to reduce budgets by 6%, or freeze budgets, as they've done in the hospital sector. My questions are kind of around that piece.

My first question is, were you formally contacted as a stakeholder and consulted on Bill 109 at the time it was going to be tabled, a month or so ago?

Mr. Smokey Thomas: No.

Ms. Cindy Forster: Are you concerned that—well, you actually spoke to that one, about it not addressing the issue of the non-union piece. It was suggested in a deputation this morning that in fact there are long-lasting morale issues following PSLRTA votes in the health care sector under PSLRTA. Can you comment on that?

Mr. Smokey Thomas: That's just a poor excuse to try to get what you want. If there are long-lasting bitter feelings, it's because a couple of unions—and one in particular that's in favour of this—their behaviour during them is atrocious. In fact, hospitals have had to call the police in. CUPE, ONA and OPSEU: We behave in a way that's professional. I can't say that about the other two unions.

I'm not aware that there are any long-lasting hard feelings. But if it's shoved down your throat by the government, I can guarantee you there will be bitterness forever, right? You already have an unhappy workforce in hospitals, because they're treated like dirt by the bosses, so if you want to make it worse, just do this one.

Ms. Cindy Forster: There was some suggestion, both by a government member and by one of the deputations this morning, that they're working on a percentage that would be less onerous. Can you comment on that?

Mr. Smokey Thomas: There is no percentage that's acceptable to us. If it's one or two members, they still have the right, under federal law, under the charter, to have that freedom of choice.

I'll just say that if they do this—I've talked to ONA and CUPE, and we're all lining up—we'll see them in court. And you know what? I'll bet you a dinner that we win.

Ms. Cindy Forster: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. There are about 40 seconds. Go ahead, Mr. Gates.

Mr. Wayne Gates: Smokey, how are you today? You know that I've been involved in the labour movement for a long, long time.

Mr. Smokey Thomas: Yes.

Mr. Wayne Gates: I think that maybe you'll agree or disagree with me that no matter what union you are, if you're providing a service to your members, they will always choose your union—not your union, but a union. Do you agree with that or disagree?

Mr. Smokey Thomas: Yes. My philosophy is this: If you work hard, and you represent your members well, and you win the hearts and minds of your members by working hard, they'll want to stay with you. If you don't, you're going to lose them in these votes, and that's your fault, not the members' fault.

Mr. Wayne Gates: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Gates and Ms. Forster. To the government side: Mr. Potts.

Mr. Arthur Potts: Mr. Thomas, thanks very much for being here. I appreciate very much the work that your members do in our hospital sector and elsewhere in the province.

You may know about me. I have a background in labour relations, a master's degree, and I wrote my master's thesis on expedited certification processes, so I'm actually a big believer in the vote, and a vote in every circumstance where it's at all possible.

But if we go down this route, I think we need to see this in terms of membership card evidence. It's typically the case with most unions that they prefer to see a certification based on membership cards, which is a 60% threshold.

Are you saying, as a union, that you would accept having a vote in every situation? You accept that, and you wouldn't prefer to see membership card evidence at the 60% level determine the support of a union?

Mr. Smokey Thomas: I'm not quite sure—

Mr. Arthur Potts: Well, let's put it this way. Let's go to your 60-40 argument: 60% are unrepresented; 40% are represented. Would you be satisfied if we had a vote in that situation, in which having no union was one of the options?

1420

Mr. Smokey Thomas: That's what the law provides for now.

Mr. Arthur Potts: Okay. So I think that's the answer to the question you were posing. It wouldn't be that the members would automatically lose their rights; they would have a chance in a representation vote—

Mr. Smokey Thomas: But the way it's written, the members would lose their union. The way it's written—

Mr. Arthur Potts: Only if the majority of the employees voted against the union. They would still have an option of voting for the union.

Mr. Smokey Thomas: No, no. There would be no vote. If it's 60% non-union—

Mr. Arthur Potts: No, I'm telling you that. Would you be satisfied if that were the case, if we had a vote in those situations?

Mr. Smokey Thomas: Yes. I want to vote every time. In that scenario, and every other scenario, we want a vote each and every time.

Mr. Arthur Potts: But you're not satisfied to know that over 60% of the membership card evidence shows favour for one union. Therefore you avoid the protracted legal or election proceedings by making a determination. You avoid what is a problem in long certification vote processes: the animosity, the evidence—you avoid that by just going with the membership base card evidence, which is the way it's done in construction at the moment in Ontario and the way that it used to be done.

Mr. Smokey Thomas: I don't like the way that construction does anything in labour, just so you know. For them to agree to let a unionized company use non-union—I don't want to go there.

All I'm saying is that workplace democracy dictates that you should have a vote. What you're talking about is, if CUPE has been in a hospital for 100 years and OPSEU has been in a hospital for 100 years and they merge those hospitals—every one of the workers got hired into a closed shop. So there is no card-based evidence to say what you're proposing, I believe.

What I'm saying is, there should always be a vote because that gives the workers a say. I've talked to some hospital CEOs, who will not speak up, but they say, "We like it the way it is."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Arthur Potts: It's my understanding, in this legislation, that there will be a vote in every circumstance in which no union shows greater than 60%. So if they can show 60%, there's no vote; anything less than that—if it's 50-50, 55-45, half union, half non-union—you will have a vote.

Mr. Smokey Thomas: Well, what I'm saying is that there should be a vote every time; one member, one vote. That's what my union is built on. Not all unions are that way—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Thomas, and to your colleague, for your deputation on behalf of OPSEU.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward, Mr. Hahn and Mr. Hurley, of CUPE, Ontario. Welcome, gentlemen. I know you know the drill very well: 10 minutes' intro and rotation by questions. I'll give you a second to be seated, and I invite you to please begin now.

Mr. Fred Hahn: Good afternoon, everyone. My name is Fred Hahn and I am the president of CUPE, the Canadian Union of Public Employees, in Ontario. With me today is Michael Hurley, who is our first vice-president, but also the president of our Ontario Council of Hospital Unions.

CUPE represents almost 250,000 workers in every community all across the province. We have workers in universities, social service agencies, municipalities and school boards. While on occasion there have been representation votes in those different kinds of services, the majority of our experience comes from the health care sector where we're proud to represent 70,000 workers in hospitals, long-term care facilities, homes for the aged and home care.

I believe you've got our brief, so I'll get right to the point.

Bill 109 has three distinct schedules, but today we'll focus exclusively on schedule 2, the Public Sector Labour Relations Transition Act, or PSLRTA.

Simply put, PSLRTA requires that when workplaces merge, the issue of which union will represent all of the workers in the new bargaining unit can only be settled by asking the workers themselves, and then allowing them to answer that question through a board-administered secret ballot vote. Schedule 2 of Bill 109 takes away the mandatory right of workers to have access to that vote. The assumption appears to be that if one bargaining unit going into a merger has 60% or more of the workers, then there's no need to have a vote, because we can predict the outcome. But the facts are very different, as is our experience.

Since PSLRTA began in 1997, CUPE has won and lost these votes, as have other unions that are affected. Sometimes we've won where CUPE members were only

a minority of voters; sometimes we've lost where CUPE members were the majority. But in every case, CUPE members have accepted the results because they were democratically arrived at by the workers themselves, and not forced on them by any government or any piece of legislation.

The right to choose is so important that it's actually spelled out in the purpose clause of the Ontario Labour Relations Act and the Public Sector Labour Relations Transition Act. Removing the mandatory right to vote in schedule 2, as it does, contradicts both the Labour Relations Act and PSLRTA, but we believe it would also violate section 2(d) of the Canadian Charter of Rights and Freedoms in terms of freedom of association, which must be truly free.

There is no good public policy reason for schedule 2 of Bill 109. When we've attempted to ask the government whether they have a good public policy reason, they haven't offered one, so in our view, schedule 2 should be withdrawn, plain and simple.

I'll turn it over to Michael.

Mr. Michael Hurley: Thanks, Fred.

Thank you very much for the opportunity to talk about this legislation.

First, let's talk about—if you don't mind—the hospital sector, where a majority of these votes were occurring. The workforce is predominantly female—85%—and already, that workforce operates with significant restrictions on their liberties: no right to strike and no right to refuse unsafe work in the same way as other workers. So I think you want to be quite circumspect in terms of imposing any additional restrictions on them.

This sector has been restructuring since the previous Conservative government established a restructuring commission and began the process of merging services. Those mergers have picked up pace, they've been very aggressive, and there have been many, many representation votes. I personally have been involved in many of them.

I would like to say that, in the cases where people lose representation votes, they lose them because they have failed to keep the loyalty of their members; either they haven't operated democratically or they haven't provided them with good service. We've lost units for that reason, and others have lost for that reason. Locking people into a union that they don't believe is democratic or represents them is profoundly unfair. It isn't the kind of remedy that you'd entertain for citizens, generally. We all have an opportunity to revisit our elected officials, and so should these workers.

These rep votes are not disruptive in any way. I think Smokey Thomas outlined what happens in the lead-up. We have tables in the cafeteria. We have meetings that people are invited to. We're not allowed to disrupt patient services by going onto floors and talking to people. We have meetings offsite. We might have them over for dinner. There's a vote. Are people unhappy if they lose? Activists may be. Do they assimilate? They almost all do. We have many fine activists working in our union who at one time were members of another union. I have friends who were activists in CUPE who are now active in OPSEU, SEIU and other unions.

I raise the concern with you, as the restructuring picks up pace—for example in the South East LHIN, or in the Scarborough area or in other parts of the province—that this system that you're setting up allows the government, the LHIN and the employers to manipulate representation in terms of the timing of transfers of workers to a new entity, such that it never in fact triggers a representation vote, and leaves the employer, at the end of the day, with a compliant trade union with an inferior collective agreement that won't be outspoken.

I guess that brings me to my last point: When the three largest unions in the sector—ONA, OPSEU and CUPE—all with long-established collective bargaining relationships with the employers in long-term care in the hospitals and in mental health—oppose this change, and still, the change is rolling forward, we have to ask ourselves why. The only answer that I can find to that question is that people who have supported the government are being rewarded with a legislative change that will allow them to ensure that their market share will be preserved through restructuring, despite the fact that they would be otherwise unable to achieve that in a free vote, held properly as it should be. I say that with the utmost sincerity.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We'll now move to the NDP, to Ms. Forster.

Ms. Cindy Forster: So OPSEU has said they've got 150,000 members, CUPE has said they have 400,000 members, CLAC told us this morning they have 15,000 members in Ontario, and ONA, I know, has 66,000 members in Ontario. That's 620,000 members of unions that are actually opposing any change in this PSLRTA legislation.

We FOIed the Ministry of Health document that stated that there was no consultation done, with the exception of one stakeholder, and that, in fact, this issue is not even a problem. I don't see anybody here from any employers. I don't see the OHA here. I don't see anybody here from the nursing home sector or from the CCACs, which indicates to me that there isn't a problem.

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So I ask you: Were you formally contacted as a stakeholder or consulted before Bill 109 was actually tabled a couple of weeks ago?

Mr. Fred Hahn: No, we weren't. On this question, as we said, we can't discern what public policy initiative or problem this schedule of the bill is trying to solve. When we've asked that of ministry representatives—we have yet to find an answer.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Go ahead, Ms. Gretzky.

Mrs. Lisa Gretzky: I guess my question is more around membership of two unions in a merger. We all know that a happy workplace is a productive workplace; as Mr. Gates said, happy members will stay with you.

My question is, having been through mergers where you've lost votes: What is the morale of the members like in a situation if it's a majority membership merger, so they're now in a union that they don't necessarily want to be in, as opposed to a majority vote situation, where the majority of members vote and choose the union they want to belong to? What would you say the effects would be, both ways?

Mr. Michael Hurley: Well, our members are always disappointed—the activists—when they're unsuccessful. They've been active in their union for their whole life, they have a whole family of activists who they know and work with, and they're losing all that, and they're very depressed about it. But they're activists, so at the end of the day they start going to meetings. At the end of the day, a good union welcomes them into the new union, they become active and that's it.

But we've had that opportunity for closure. We've had a process. It has been a fair process, monitored by the state. It makes it all okay.

Mr. Wayne Gates: Just quickly—do I have time?

The Chair (Mr. Shafiq Qaadri): Ten seconds.

Mr. Wayne Gates: Ten seconds. You have no problem with the firefighter part of the bill? You have no problem with the WSIB part of the bill? This is strictly that this part of the bill should be withdrawn. Am I correct?

Mr. Fred Hahn: That's—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster, Mrs. Gretzky and Mr. Gates. To the government side. Mr. Potts?

Mr. Arthur Potts: Thank you, Chair. Thank you, Mr. Hurley and Mr. Hahn. Great to see you again.

I'd like to go back to this: I'm delighted to hear about workplace democracy and the interest we have in making sure that there's a vote. This goes to every certification. If you went into an organization that had 20 employees, in the olden days, you had to sign a membership card, and at 60%, there would be no vote; it would be an automatic cert.

So you're supportive of the current legislation and a new certification process, that a quick, expedited certification vote is the right way to go, based on votes and not just membership card evidence?

Mr. Fred Hahn: I was listening carefully to your question in the previous presentation. What I want to be clear about here is that I think that there is a difference between the organization of a non-unionized workplace and a workplace like in health care, where we have workplaces that have been organized for 30, 40 or even many longer years, where workers are picking which union they want to represent them.

In relation to the organization of a new workplace, card-check certification makes perfect sense. If you can actually get somebody's signature on a card—

Mr. Arthur Potts: So it's a bit different, then. You don't believe in workplace democracy in that circumstance, but you do in this circumstance. That's fine. That's—

Mr. Fred Hahn: No, no. I want to correct you. In fact, it's quite democratic. When any of us signs a mortgage, a legal contract, a binding situation—you're putting your name on a card and you're saying, "I choose to be represented by a union," and that signature should be as binding as it is when you sign a mortgage or when you sign any contractual legal obligation.

Mr. Arthur Potts: So let's take it to the other end of the collective bargaining process. Once a union is in place, if there's an application for a new union to come and represent the employees, maybe you can take our committee through what that process looks like, and in a decertification or in a change of union cert during the open period of a collective bargaining agreement—you still have that opportunity. You could move into a different union shop during that open period, sign up members and get a vote.

Mr. Fred Hahn: There is an understanding between unions through the Canadian Labour Congress about how it is that we operate together in workplaces. What we are talking about here, schedule 2 of Bill 109, is actually about a reorganization of a workplace that causes this to happen. It's not something that the workers themselves have caused to happen. It's not something that the unions have caused to happen. It has happened by a reorganization caused by the government or the funding process.

So, as a result of that, the history that we have enjoyed in the province is that workers then have the ability to have a democratic vote. What we think, and what we believe is required—

Mr. Arthur Potts: So the history I'm hearing, the agreement in the congress, is that you don't use that open period in order to replace unions.

Mr. Fred Hahn: No, we do not.

Mr. Arthur Potts: Okay.

You had a question?

Ms. Indira Naidoo-Harris: Just a really quick comment. Thank you so much for coming in. It's really good to hear your concerns and your thoughts about Bill 109. I just wanted to put on the table one of the reasons why I feel the government is looking at this option. It's really about the circumstances under which health workers are working. They are in hospitals in emergency situations where life-and-death decisions need to be made. I think on a certain level—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts and Ms. Naidoo-Harris. The floor now passes to the PC side. Mr. Arnott.

Mr. Ted Arnott: I want to thank you gentlemen for coming in today to express your views on behalf of CUPE and also thank your members for the good work that they do in our communities.

You've raised some very salient arguments with respect to the issue around merger-driven representation votes and you've raised some troubling concerns. We just heard from OPSEU that they believe that this is completely unconstitutional and wouldn't survive a court challenge. Would you agree with that?

Mr. Fred Hahn: Indeed. That's why we rather briefly talked about the Canadian Charter of Rights and the

freedom of association. We believe that it's quite clear that that freedom of association has to mean something, and in a situation like this, having the ability to vote would, in our view, clearly be required.

Mr. Ted Arnott: It would seem to me that having these representation votes probably leads to greater acceptance of the outcome, whatever it is, amongst the members over time. Also, it's been argued to me that it leads to greater accountability from the leadership of the various unions to its members. You would agree with that, I assume.

Mr. Michael Hurley: Absolutely. I can think of one large urban hospital that we almost lost despite outnumbering the opposition by 3,000 to 50. Why did we almost lose it? Because we hadn't been paying attention to those people. Should they be locked in for the rest of their lives to a union that they don't feel represents them? I don't think so.

To the point about the hospitals being emergency situations, these people deserve to have the opportunity to be able to vote. They deserve that right. They're able to do that without that being at the expense of patient care.

Mr. Ted Arnott: Do you think that the government is doing this as a form of political payoff to some of the unions that have supported them?

Mr. Michael Hurley: My view is, absolutely, yes. There is no credible explanation that's been mounted by the various government officials who we've met with, but we have been told that it has been requested by some unions that, coincidentally, are supportive of the governing party. Maybe that's the explanation that makes the most logical sense.

Mr. Ted Arnott: It's my understanding that the Minister of Labour's office informed some unions, at least, in 2013 that they would not be proceeding with this kind of a legislative approach. Is that true?

Mr. Fred Hahn: That's right. This idea was floated when we were asked back in the day about our view of it. When we presented our view, we were told this would not be happening.

Mr. Ted Arnott: That was before the provincial election.

Mr. Fred Hahn: Yes.

Mr. Ted Arnott: And something different has happened afterwards.

Mr. Fred Hahn: Yes.

Mr. Ted Arnott: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott, and thanks to you, colleagues from CUPE, Mr. Hahn as well as Mr. Hurley.

ONTARIO NURSES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward from ONA, the Ontario Nurses' Association, Ms. McIntyre and Mr. Walter. Welcome. You know the drill very well. I invite you to please begin now.

Ms. Elizabeth McIntyre: Thank you. My name is Elizabeth McIntyre. I am a lawyer who has worked in labour relations in health care in this province since 1974. I am here on behalf of the Ontario Nurses' Association and I'm here with Lawrence, who is a staff member at the Ontario Nurses' Association.

I'm sure most of you are familiar with ONA. It is the union for nurses since 1973. It represents 60,000 front-line RNs, nurse practitioners, RPNs and other allied health professionals, as well as 14,000 nursing students. ONA's members work in all subsectors of health care: hospitals, long-term care, public health and community home care.

In the majority of those places, PSLRTA applies. That's why we're here, not with respect to the other provisions of Bill 109, but with respect to schedule 2 and the proposed amendments to PSLRTA. ONA is opposed to those amendments.

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One thing that's constant in health care in this province is change. The health care system has been undergoing change since at least the mid-1990s, and obviously that change has a significant impact on ONA's members who are on the front line, delivering health care in the face of change.

PSLRTA was first enacted by the Harris government in 1997 to put in place specific successor rights provisions to respond to the changes they were making in health care, particularly mergers of hospitals. Then, in 2006, in connection with the enactment of the integration act and the creation of LHINs, PSLRTA was amended to cover not just hospitals but all subsectors of health care and to respond not just to mergers but to integrations and the labour relations consequences.

I have been involved in many of the PSLRTA applications from the beginning and I can tell you that, on the whole, as much as it was despised when put in place by the Conservative government initially, it has actually worked quite well. It works to redefine the bargaining units, and that's made necessary by the restructuring that's happening, and in determining the bargaining agents who are, then, the representatives in those new bargaining units.

I can say that from what I've seen, the unions, while they're not happy with the restructuring, have been relatively happy with the way PSLRTA works. An integral part of that has been the running of votes to determine which of the existing unions should hold the bargaining rights on a go-forward basis.

You've heard about the fact that the unions worked together from the outset to establish very efficient rules around these short campaigns where the employees affected get information and then they get to vote. It is not disruptive, by and large, and to the extent that the committee has been led to believe otherwise—I'm not sure where that's coming from because we have not seen it.

We take the position that the amendments that are being proposed are unnecessary and they're contrary to the fundamental principle of workplace democracy.

If you look at the goals under PSLRTA, you will see that they talk about facilitating collective bargaining between employers and trade unions that are the freely designated representatives of the employees. So this provision is in fact contrary to the purposes of the act that it seeks to amend.

So why is ONA opposed to it? The fundamental principle of workplace democracy and the circumstances of determining the wishes of the voters in situations where you're merging existing bargaining units where you've had bargaining rights that have been in place for decades is very different than determining workplace democracy in an un-unionized workplace, where you've got employees held captive by employer influence and the debate is whether cards or a vote is the best way to go. Unions say cards are. That is very different than the situations where you're merging existing workplaces. That's the first fundamental reason.

I can tell you that for the workers affected, it's bad enough to be subjected to this constant change and uncertainty as to what's happening to their jobs and their workplaces without having their union taken away from them and without even having a voice in that. And yes, it's much easier for workers to accept a change in union representative if they've had a voice in the vote. That's the first thing.

Secondly, we say that there's absolutely no reason to eliminate the democratic right that's been there and has been used since the act was put in place. What was said to justify this was that it would help reduce the potential for disruption and delay. That came as a great surprise to ONA, because the votes are not a source of disruption and delay. In fact, PSLRTA has caused some delay, not because of votes but because of cases where there is litigation. I should know this because I'm responsible for a number of them.

It's not about the votes; it's about the fact that there's a provision in the act that says if there is a PSLRTA application that's proceeding, then no one can apply for certification rights. In one case I was involved in, SEIU's application for certification was delayed for some time because of that provision. It had nothing to do with the section that is now being sought to be amended.

The fact that that is being held out as the reason for change is not a credible reason. In fact, if you understand the way lawyers think and work—and union organizers—you'll realize that, in fact, if you put in an arbitrary cut-off—let's say 40% or 30%—in any case that is close to the line, that's going to cause the parties to try to take a position to change the numbers, because they can say the bargaining unit description should be this versus that; these positions, these employees should be taken on or off the voting list. That is what's going to lead to litigation. That is what's going to lead to disruption and to delay in resolving these things. That is what's going to happen if you put this amendment in place.

With respect to those cases where a union may have very minimal support, the parties can—and do, in fact—sometimes withdraw voluntarily their right to be on the ballot. But that should be the choice of the bargaining agent and the workers, and not imposed by some arbitrary cut-off set by the Legislature.

I was going to give you two examples to prove our point here. One is from the restructuring of the community care access centres—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Elizabeth McIntyre: —from 43 down to 14. ONA was successful in a case where it represented under 40%. We've got this vote coming up in Kingston, where OPSEU represents 61% of the nurses and ONA represents under 40%. OPSEU and ONA are quite happy to see their members choose on the basis of a campaign.

Finally, I would say to you that, in fact, I think this legislation is in trouble from a constitutional point of view. We've included our comments on that in our brief. I think there is quite a credible challenge to this legislation in light of the trilogy of charter cases that have been released by the Supreme Court of Canada in 2015. I'm not sure the government wants to go down that road. It would be fun for me.

Mr. Mike Colle: Lawyers always have fun.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. McIntyre. To the government side, to Mr. Colle.

Mr. Mike Colle: Thank you. You mentioned this situation that ONA is having with OPSEU, where they have 61% and ONA has the rest—

Ms. Elizabeth McIntyre: It's 39%.

Mr. Mike Colle: It's 39%? You mentioned that there's a campaign that would take place. Could you explain this concept of a campaign?

Ms. Elizabeth McIntyre: Okay. Under the ground rules that the unions came up with, way back when the Conservatives first introduced this, we agreed there would be a two-week campaign period. During that campaign period, both unions could have a table in the cafeteria of the hospitals. They could distribute campaign material. There would not be a disruption of patient care. So you'd have an informed electorate who then get to vote.

It all goes quite quickly and is not—I don't know how anybody can claim this is an expensive process. It isn't.

Mr. Mike Colle: I guess, in some cases, it seems—whether it's Unifor or SEIU—they think that this is an onerous, disruptive process. Now, why would they not agree that this is as cordial as your experience seems to be?

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Ms. Elizabeth McIntyre: That's a very interesting question to which I don't know the answer. But I can tell you this: I was counsel to the nurses' union in Nova Scotia last year when they tried to go through restructuring and imposing bargaining units without votes. It caused all the workers to be out on the street. Unifor took a position that there should be a vote in every case, and there was so much political pushback on that that the Liberal government withdrew their entire bill with respect to imposing bargaining agents on unwilling

members without votes. So, curious—I don't know the answer.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Martins, you have 45 seconds.

Mrs. Cristina Martins: I just wanted to first off thank you for being here today. I have great respect for the nurses of our province and all the care that they provide. I have a few nurses in my family.

I just wanted to get, perhaps, your perspective on—the legislation that is currently before us that is being proposed is perhaps not very different, if not similar, to what we actually see in Saskatchewan and Alberta. Why is Ontario different in that this would not work? Why is that?

Ms. Elizabeth McIntyre: The legislative structures are very different across the country. I spent a fair bit of time looking at the various pieces of legislation across the country when I was on the Nova Scotia case—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle and Ms. Martins. The floor now passes to the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for coming here today to make your views known on Bill 109, and thank you to your members for the outstanding work that you do in all of our communities all across the province.

I think, again, you've made some very powerful arguments in favour of continuing to have merger-driven representation votes, as have some of the other unions that have come before us today. I would again make the point that it would seem to me that if you have a free and open democratic vote in these situations, over time, most likely, you would have greater acceptance of the outcome. Would that be your contention as well?

Ms. Elizabeth McIntyre: Absolutely. Absolutely.

Mr. Ted Arnott: One of the previous presentations that we heard today said this: "Well, such-and-such political party got the support of 60% of the vote in the last election so we'll take a pass on having an election this year," suggesting that if indeed that was the statement that was made to a political party, it would be rejected out of hand. I would assume that you would concur with that as well.

Ms. Elizabeth McIntyre: Absolutely, and in fact the argument is even stronger because, in many of these cases, those bargaining rights were established decades ago, when many of the current employees didn't have a say in it, so it's not like a recently signed card. This was a certification that took place decades ago.

Mr. Ted Arnott: You would anticipate, I'm guessing, that there's going to be quite a significant number of mergers in the next year or so, based on statements that have been made by the Minister of Health. Do you think these two things are connected, this provision in Bill 109 and what the government may be planning?

Ms. Elizabeth McIntyre: I can't speak to the legislative agenda, but I do agree that there will be a number of integrations where the act applies, and it should apply as it's currently written, in my view.

Mr. Ted Arnott: Lastly, we had a suggestion by one of the previous presenters that this provision in Bill 109 may in fact be political payback to certain unions that have supported the government. Would you be prepared to comment on that, or speculate on that?

Ms. Elizabeth McIntyre: I have no comment.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. To the NDP: Ms. Forster.

Ms. Cindy Forster: Thank you for being here, Liz and Lawrence. Was ONA formally contacted or consulted at the time Bill 109 was tabled?

Ms. Elizabeth McIntyre: No, and in fact when it was tabled, it came as a great shock. What is this? There is no problem to be fixed.

Ms. Cindy Forster: Was ONA told by the Ministry of Health, during the minority government in 2013, that they would not be proceeding with any similar type of legislation at that time?

Mr. Lawrence Walter: By the Ministry of Labour.

Ms. Cindy Forster: By the Ministry of Labour?

Mr. Lawrence Walter: Yes.

Ms. Cindy Forster: I know that both of you have been involved in many PSLRTA votes over the years—as had I. In the 20 years that this legislation has been in place, have you ever found it to be extremely onerous in terms of union finances, in terms of human resources, from the union side or from the employer side?

Ms. Elizabeth McIntyre: Not with respect to the votes. There have been other issues, but I've never seen a case where the vote itself has led to litigation or been contentious.

Ms. Cindy Forster: Okay. Can you, in your maybe two minutes that you have left, comment on the success of a charter challenge, based on the recent decisions that you've outlined in your document?

Ms. Elizabeth McIntyre: Well, of course I can't guess what the courts are going to do, but we do know that they have now, through this recent trilogy, established that the freedom of association in the labour context process is actually a meaningful one. It establishes the right to belong to and maintain a trade union, to join a trade union that is of their choosing and independent from management. This case would be an extension of that.

But to address the issue about legislation in other jurisdictions, including Saskatchewan, I can tell that that legislation was passed prior to these cases being decided, and those cases being decided was a significant factor in the government of Nova Scotia withdrawing their "restructuring without votes" legislation.

That's all I can say.

Ms. Cindy Forster: Thank you. Well, Ms. Martins will have to read the Hansard to get the answer to her question.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster, and thanks to you, colleagues from the Ontario Nurses' Association, Ms. McIntyre and Mr. Walter.

MR. L.A. LIVERSIDGE

The Chair (Mr. Shafiq Qaadri): I'd invite our next presenters to please come forward: L.A. Liversidge,

Barristers and Solicitors, Professional Corp., Mr. Liversidge and Ms. Miller. Welcome.

Mr. L.A. Liversidge: Thank you very much.

The Chair (Mr. Shafiq Qaadri): You know the protocol. I'd invite you to please begin now.

Mr. L.A. Liversidge: Thank you very much, and thank you for this opportunity to speak to the committee—

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, might we have a little silence for our presenters, please?

Mr. L.A. Liversidge: I'm going to be focusing on schedule 3 of Bill 109, which amends the Workplace Safety and Insurance Act rather significantly.

I've been involved with the Ontario workers' compensation scheme now for about 42 years and have been involved in pretty much every major reform since 1985. That includes the reforms of 1990, 1995 and 1997, and anything that has happened since then.

Bill 109 is an omnibus bill, with schedule 3 bearing little connection to schedules 1 and 2. I'm reminded of comments advanced by a former leader in the Legislature in response to a government omnibus bill under consideration at that time. She said this: "I have a real problem with omnibus bills.... It's because the omnibus bills—the parts we miss, the parts we couldn't debate, the parts that the public wasn't aware of—come back to haunt us." That was Lyn McLeod, on November 19, 2002. I respectfully suggest that schedule 3, if passed, will come back to haunt us.

I'm going to focus, as I mentioned, just on schedule 3. I'm not going to touch on the other elements of Bill 109. In the paper which I presented, I outlined, under the first part of that—there's a general, quick overview, and there are some parts of schedule 3 which I support. I support schedule 2, the adjusting of the earnings basis for death benefits, and I offer no opposition to section 6, the codification of the Fair Practices Commission, which currently exists and is currently operating as a function of WSIB policy. But I will be touching on sections 1, 3, 4 and 5 of schedule 3. What these attempt to do, in my reading of it, is to addresses alleged concerns of what has been coined "employer-induced claim suppression."

Allegations of employer-induced claim suppression are not really new. We've been hearing about them in the workers' compensation scheme since the inception of experience rating about 30 years ago. Those allegations surfaced in a pretty dramatic fashion during the 2010-11 investigation by Dr. Harry Arthurs in his funding review of the WSIB, and were profiled in his report, Funding Fairness. He outlined some anecdotal allegations in that particular report.

Those allegations, untested by the rigours of normal process, proved a powerful narrative, notwithstanding an earlier study triggered by precisely the same charges, a 2005 study by the Institute for Work and Health, Assessing the Effects of Experience Rating in Ontario, said this: "The large majority of employees stated that they are being encouraged to report accidents and incidents and are being offered suitable modified and early return to work." They did not find this to be a particular problem.

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In 2012, I believe in response to the Arthurs report, the WSIB commissioned Prism Economics and Analysis to investigate the overall question of claim suppression. The Prism report, in my reading of it, was unable to support its provocative conclusion that "claim suppression appears to be a real problem" with evidence that rises to any acceptable standard. It defines claim suppression as "actions taken by an employer to induce a worker not to report an injury" or to minimize the report of that injury.

I think that's a critical place to start: that an employer must induce a worker not to report or to under-report. It is clear that the employer, then, would be acting with what is commonly referred to as intent. So it's not an innocent act. We're not talking about acts of omission; we're not talking about employers who are not aware, who are not informed or where a lack of reporting is driven by a lack of knowledge. We're talking about employers who, with eyes open, are doing the wrong thing.

The Prism report infers—rightly, I contend—that there must an intention behind the employer's action and it's a deliberate act on the part of the employer. It is important to note, though, that these types of actions—the non-reporting of an injury—are already an offence under the Workplace Safety and Insurance Act. In fact, the ability to suppress a claim and to coerce a worker to do so would also be a mens rea offence under the Workplace Safety and Insurance Act.

Yet the Prism report, upon which I believe Bill 109 is based, fails to credibly introduce a single motivation explaining the unlawful behaviour. In fact, it says this: "There is no strong evidence to support credible inferences on the motivation for claim suppression." Notwithstanding the conclusion that "claim suppression appears to be a real problem," the Prism report itself says, "It is not feasible to develop even a weak estimate, let alone a credible estimate, of the incidence of employer-induced claim suppression."

The one potential, rational explanation could be experience rating. I referenced the Institute for Work and Health 2005 study that did not find any correlation, nor could the Prism report find a correlation between this employer behaviour and experience rating.

The Prism report even examined WSIB prosecution and enforcement files, where active prosecutorial action or investigation had commenced and they were unable to—I'll read right from the report—"provide any conclusive evidence on employer motivation for claim suppression."

So where does this lead us? The Prism report purports to convince that while claim suppression is "a real problem," it admits that there is no strong evidence to explain and there's no evidence to advance a weak estimate, let alone a credible estimate, of the incidence of employer-induced claim suppression. The report even

notes that "employer inducement (an essential component of suppression) may not account for the preponderance of non-submissions or under-reporting."

The premise upon which Bill 109 is based, I respectfully suggest, is a bit of a false premise. It's chasing a problem that, in reality, is not existing. It is using a very strong sledgehammer. But it is also approaching the idea of claim suppression in a rather interesting fashion. The Prism report characterizes the purpose of the research that it was designed to undertake, under its instructions from its client, the WSIB, as "to identify anomalies in the file records which are suggestive of a risk of claim suppression, though not necessarily proof that claim suppression occurred."

So long as there is no proof that it cannot happen or if there is any risk that it can happen, then the question, I suggest, becomes the conclusion. But proving a negative is an impossible onus. In philosophy, such expectations are rightly disparaged as Russell's teapot and, in law, are addressed under the general rubric of burden of proof. If the legal standard was applied in this case, with respect to the allegations of claim suppression, there would be a conclusion that it was unproven, and the matter would be put to rest. Instead, we see the opposite result.

The WSIB responded to the Prism report, and I outline that in my paper. They responded to the Prism report, in my opinion, in a responsible, prudent, intelligent, proper fashion. They indicated that, "Well, we're not going to ignore this; we're going to address this. There seems to be an issue that warrants attention by the Workplace Safety and Insurance Board, and it is getting attention by the Workplace Safety and Insurance Board."

It's my respectful submission that there is insufficient reason to create a new offence or to increase the board's investigative powers when the present statutory regime adequately responds to any employer misconduct. And it's my suggestion that schedule 3 is going to prove to be a problem, give the boards extraordinary powers—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. L.A. Liversidge: —and Ontario employers will be paying an inordinate price for this. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Liversidge. We'll go to the PC side to start. Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearng here before us today and for your eloquent presentation on a side we haven't heard very much about on Bill 109.

I'll give you some more time to expand on the fact. You're saying that if schedule 3 passes—how do you expect the WSIB will approach this?

Mr. L.A. Liversidge: Well, that's a good question. That's an excellent question.

Ms. Laurie Scott: Following up on your presentation.

Mr. L.A. Liversidge: First of all, right now the WSIB is addressing this problem. It's not as if they're asleep at the switch. They're not asleep at the switch; they're fully engaged in this. They have been fully engaged in this for some time. They are trying to address this problem. They realize this is an undefined problem. So they've got a problem of how to focus on this, and they've concluded that the number one source of problems of claim suppression comes from employers who are not registered with the WSIB. This bill isn't going to do much with that.

The WSIB of Ontario is already going after those employers, and rightfully so. But the other point that the board makes in its response to the Prism report is that it's going to address this through employer education. That fits, I think, with the findings of the 2005 Institute of Work and Health report.

Where I do have a worry—a serious worry, a significant worry—is that schedule 3 of Bill 109 gives the board very broad, powerful, undefined powers of investigation. In effect, the WSIB investigator—the police officer, if you will—can actually determine what the offence is because the legislation says it is at a minimum this, and it could be more than that. I think that this will be a huge problem as it unfolds over time. It's a serious sledgehammer to address a problem that does not exist to the magnitude feared—or at least, one could infer from Bill 109. I'm not suggesting that claim suppression does not exist. It does, but it is not suggested that you have a compliance issue. You're seeing the rate of employer non-compliance on the rise, and therefore you could, I think, reasonably conclude that the current regulatory and prosecutorial framework is not working—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. L.A. Liversidge: —is not having its designed and desired effect, so therefore you go to upping the ante on the penalties and creating new offences. That's not where we are. There's no such evidence and no such evidence has been obtained, even though this has been an active worry for 30 years.

Ms. Laurie Scott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. We'll now move to the governing side.

Mr. Mike Colle: No, it's the NDP side.

Ms. Laurie Scott: That was their question.

The Chair (Mr. Shafiq Qaadri): Oh, I'm sorry.

Mr. Mike Colle: You're out of order, Mr. Chairman.

Interjections.

The Chair (Mr. Shafiq Qaadri): So it's the NDP's turn. Thank you; it's getting late.

Ms. French, do begin.

Ms. Jennifer K. French: Thank you very much, Chair.

Welcome to Queen's Park. Thank you. I appreciate your presentation, and I was glad to see that section 2 of schedule 3 was something you could get behind.

Mr. L.A. Liversidge: Yes, it is.

Ms. Jennifer K. French: That was one that is important to our caucus, as I had put forward Bill 98.

Mr. L.A. Liversidge: I saw that.

Ms. Jennifer K. French: Thank you.

My question to you is if you could maybe briefly explain your role in this, because that's a piece I don't have from the submission. Who are you?

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Mr. L.A. Liversidge: Okay. I'm a lawyer. My practice is focused almost exclusively on workers' com-

pensation. I've been involved in workers' compensation in one way or another for about 42 years.

In my practice, I represent both workers and employers, but primarily employers. I'm heavily involved on the policy development front on workers' compensation policy and legislative reform, and have participated from probably 1984 or 1985 on all major legislative reforms that have come forward on that.

I sit on two advisory groups set up by the current chair of the Workplace Safety and Insurance Board. Actually, they were structured initially by Steve Mahoney, and now by Chair Witmer. I believe there are four advisory groups overall, and I'm on two of those advisory groups.

I have strong connections with many employer trade associations involving workers' compensation advocacy, including one that I referenced in my submission, the construction employers council, which has addressed this issue and, in fact, as of this moment, has filed a written submission to this committee which should have been received by email, probably during my comments.

As well, I'm heavily involved with the service sector, transportation sectors, the hospitality sector and, notably, the construction sector, principally the Mechanical Contractors Association of Ontario.

Ms. Jennifer K. French: Thank you. I appreciate how in-depth you have delved here, especially when it comes to section 1, creating a new offence. As you have said, you feel there is insufficient reason to create a new offence based on employer-induced claim suppression. If that were a problem, if there was sufficient evidence to support that, would that be enough to create a new offence?

Mr. L.A. Liversidge: As I said just a few moments ago, if the evidence shows that the incident—that, first of all, you can quantify claim suppression and that it's a problem that is on the rise—of which there is no such evidence, certainly no such evidence that I'm aware of—then I guess you would want to seriously retool your regulatory and prosecutorial framework. But that's not the circumstance where we find ourselves.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much for coming in and presenting to us today. We very much appreciate you coming here and giving us your thoughts on Bill 109.

I'd really like to start off with some of the things that we had been talking about. I'm sure you agree that we must ensure that those who work in Ontario feel that they are protected in some way from those who try to coerce workers from filing a WSIB report.

Mr. L.A. Liversidge: Absolutely.

Ms. Indira Naidoo-Harris: But currently, the WSIA does not have an explicit provision to deter or prohibit employers from impeding or coercing a worker from filing a claim with the WSIB. When you take that into account, and also take into account that evidence gathered by the WSIB suggests that employers will sometimes coerce or influence a worker into not filing a claim so that the employer can avoid experience rating costs, you must agree that it is government's job to ensure that we are protecting workers and protecting their rights.

I was interested in some of the things that you had to say, because on the one hand you were suggesting that this isn't a problem, and yet on the other hand you said that you do agree that it exists. Surely you recognize that it is government's role to step in and ensure that we are protecting the rights of workers to be able to make these claims.

Mr. L.A. Liversidge: I lost track of all the questions in that. There were a lot. I counted about six. Let me try to address them as best I can from my memory of them.

In response to your questions: Does the government have a role and an interest so that employers don't coerce workers, with any mechanism, not to file a worker's compensation claim? Well, of course. Any thinking individual answers that question in the affirmative. Of course that's the case.

But that's not the question, and I reject outright the premise contained in your question that experience rating is seen as and linked to this as being the catalyst of the problem. It's not. There's no evidence of that whatsoever. In fact, just the opposite: There is not a single Canadian study that establishes a theoretical or actual linkage between experience rating and claim suppression. It's just not there, even though—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. L.A. Liversidge: —there have been hard-core allegations advanced over a period of three decades and ample opportunity for that evidence, if it did exist, to come forward. In other words, what I'm saying is that if this were the problem of a magnitude that would warrant this type of response—remember that there are current regulatory and prosecutorial frameworks in place—the evidence would be clear and convincing right now, and it's not. There is not clear and convincing evidence of this. There is not any evidence at all of any appreciable standard. There's an inference, there's a worry—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Liversidge, and to your colleague Ms. Miller for your deputation on behalf of your firm.

TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

The Chair (Mr. Shafiq Qaadri): I now invite our final presenters. Last but not least: Signor Bartolomeo and Signora Vannucci, of the Toronto Workers' Health and Safety Legal Clinic. You have 10 minutes, as you've seen. You're welcome to please begin now.

Ms. Linda Vannucci: Good afternoon. I'm Linda Vannucci. My colleague John Bartolomeo is next to me. I'm going to begin. We're with the Toronto Workers' Health and Safety Legal Clinic. Our clinic is a specialty clinic. We've existed over 25 years, funded by Legal Aid Ontario. Our mandate is province-wide, to represent workers who have health and safety problems in the

workplace, including injured workers. We appear before the Ontario Labour Relations Board for workers who are fired for raising their health and safety concerns at the workplace. So this issue of workers' compensation and hiding claims is very near and dear to us and something that we've heard a lot about directly from the horse's mouth, the workers, over these years.

Our clinic also does public legal education and law reform. Our clients are low-income people. They come from small, non-union workplaces. Sometimes they come from large workplaces through temporary staffing agencies. They probably fit under that rubric of vulnerable workers, and we advise them on their rights.

We think Bill 109 is a positive step in the right direction. In reference to schedule 3, we think there's some room for improvement to reach the goals intended by the amendments. In terms of claims suppression, if this was properly enforced, this section could constitute a major improvement and would deter employers from suppressing claims in the various manners described in section 22.1.

We've seen claims suppression first-hand. We've had workers tell us their employers tell them not to report their injuries. In some cases, they are compensated directly by the employer and told to stay home and not report the work injury. In other cases, the employer tells them to apply for employment insurance sick benefits because WSIB is just too complicated and their case probably won't succeed anyway.

On the EI benefits, of course, they're only getting 55% of their net wages, whereas WSIB is 85%. The employer benefits because there's no reported lost time claimed. It's the employer who benefits from this claims suppression.

I would challenge what my predecessor said: It's the experience rating which causes the employer to benefit.

I had another more egregious case of a labourer who fell from a scaffold and had a compound fracture. On the way to the hospital, the employer told him to advise the emergency staff that he fell at home, and he did this. He was a cash worker. This made it difficult for him to prove his injury was work-related. It was an uphill battle for him—as it was for the other examples that I just provided to you, especially if they end up with a permanent injury—to prove that his injury was caused at work.

The employer, as I said, also incentivizes workers in other ways. There are cases where just merely providing Tim Hortons cards for free coffee will cause co-workers to actually police the situation and discourage injured colleagues from taking time off work or from reporting to WSIB.

Interestingly enough, under the current legislation, although WSIB staff has the capacity to penalize employers who fail to report accidents—which is one manner of suppressing a claim—the enforcement is very lax.

We represented a worker who was fired just for saying he was going to file a WSIB claim. We took the matter to the Human Rights Tribunal, and the worker got a significant award, but in doing so we discovered something very interesting. We obtained the WSIB file, and a memo on the file by the case manager indicated that this same employer had hidden two other claims, was caught and was not penalized. On this, the third strike, the penalty was a $250 administrative fine.

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This was shocking, and it was shocking to learn that the matter was not referred for prosecution, because the current law allows for prosecution of an employer and a fine up to $100,000 for not notifying the board of the accident. So it's the enforcement that counts here. The enforcement is very important. The current law would have allowed for enforcement in that case, which I thought was a particularly grievous case, and it didn't happen. Increasing the fine to $500,000 is not going to be a positive move unless the board actually takes an aggressive stand in enforcing the new section 22.1 and the new section 155.1.

Just one last note: After the enforcement, what happens to the worker who has been reprised against? The cases that I laid out would fit a section 50 anti-reprisal case. These are cases that we take before the OLRB where a person is fired for raising health and safety concerns. The facts I mentioned might not fit into that, but on the other hand, they do fit the Human Rights Code definition of a disability, an injury for which a person claims WSIB benefits; they could claim those benefits. I guess that would be where the worker would resort to for a remedy in terms of lost wages, reinstatement and general damages.

I'll hand it over to my colleague now.

Mr. John Bartolomeo: Thank you. With respect to the amendments, I'm going to largely address the changes with respect to the Fair Practices Commissioner. Again, with schedule 3, we applaud the changes and the move forward to address certain inequalities in the system.

With respect to section 176.1 and the fair practices commissioner, our concern with this is the recognition that the WSIB needs an ombudsman, but the way it is currently proposed does not give that person the required teeth to actually hold the WSIB to task. In our submissions, we talk about the need to make this an effective office. By doing so, it must be independent and it must have control over its own mandate.

The legislation that is currently proposed allows the WSIB to appoint their own watchdog and determine what that watchdog is allowed to examine. For this to be an effective role, the fair practices commissioner must be independent of the WSIB. For this to have the confidence of the stakeholders, especially on the workers' side, the fair practices commissioner must be seen as independent and controlling its own mandate. To that end, we've proposed language that would make the fair practices commissioner an order-in-council appointment. It would also provide for a definite term. The language as I see it gives the board the right to let that person go as they see fit. For that reason, we thought it necessary to suggest a term.

As well, we expanded the scope of the function of the fair practices commissioner. Right now, I could take a complaint to the fair practices commissioner, but in some cases I skip that completely because I have no expectation of reaching a substantive result. So I skip that and go straight to the Ombudsman of Ontario's office, because I know that the way the fair practices commission currently self-limits itself isn't going to be a help for my client's situation. To that end, we suggest a control over its own mandate to determine what the fair practices commissioner thinks it best can handle.

I think, at that point, I'll turn it over to members for questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bartolomeo and Ms. Vannucci. We'll now proceed to the NDP, to Ms. French.

Ms. Cindy Forster: Forster.

The Chair (Mr. Shafiq Qaadri): Oh, Ms. Forster. Sorry.

Ms. Cindy Forster: Thank you. Thank you for being here today. With respect to the fair practices commissioner, which I believe has been in place since 2002, I've met with a number of groups over the past few weeks, since the tabling of Bill 109 and they haven't said anything differently than what I heard you say today. They don't even go to the fair practices commissioner, because they don't feel that any substantive discussions on any inequality issues actually come out of that office, that really the commissioner just plays lip service to these complaints.

Currently, commissioners of the Legislative Assembly are appointed through a unanimous agreement of all three parties. Would you see that as being an effective way to actually appoint the Fair Practices Commissioner?

Mr. John Bartolomeo: I would agree with that. That would be the most ideal. Our concern was taking it out of the hands of the WSIB. It should be with the people and, by extension, through the Legislature.

Ms. Cindy Forster: Okay. The last speaker actually talked about there being no evidence of claims suppression. I raised this issue during the debate in the House. At a hospital system where I was actually the bargaining agent at the time, there was evidence of 700 claims over a period of time that came to our attention across three employee groups where claims were suppressed in each of those 700 cases. The only reason we found out about it was because when nurses—and nurses are not as vulnerable as the clients you're looking after in your practices—went to take a sick day, for example, because they had the flu, they didn't have a sick bank because the employer was actually using their short-term disability bank and paying them and not reporting claims.

Nurses and other health care workers told us that managers and occupational health departments were encouraging them not to file a claim, that they would be paid faster. They would get 100% as opposed to a lesser amount through WSIB. So I totally understand where you're coming from with that. In that case, there were no charges laid. It was just, "Let's reinstate their sick banks and everybody go away and play happily in the sandbox."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Cindy Forster: Clearly, there are cases of evidence, but WSIB has actually failed to report those cases in their reports on an annual basis. Would you agree with that?

Ms. Linda Vannucci: I would agree with that.

Ms. Cindy Forster: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. To the government side: Mr. Colle.

Mr. Mike Colle: I want to thank both of you, especially Ms. Vannucci for your very pointed criticism of the previous speaker. I think we let him off the hook. He got in here and pontificated, gave one side of the story and walked out of here. Thank you so much for giving the other side of the story. I wish you were here to question him, but he's gone now.

We really do have to invest some legislative resources in—

The Chair (Mr. Shafiq Qaadri): Mr. Colle, I would just invite respectful language to members of the public as they testify before here, but go ahead.

Mr. Mike Colle: We have to invest legislative resources into this whole issue of claims suppression. Has that been your experience?

Ms. Linda Vannucci: Yes, I would agree with that.

Mr. Mike Colle: And right now, as it stands, there isn't enough legislative force in terms of stopping this practice that you find common or rare?

Ms. Linda Vannucci: I find it rather common, actually. In addition to improving law, as Bill 109 would do, my submission really is about enforcing the law once it exists. That is where matters fall apart, at the enforcement.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Potts.

Mr. Arthur Potts: Thank you both for being here. Particularly with respect to the Fair Practices Commissioner, I had the same deputation, and there's a written submission from Orlando Buonastella and Laura Lunansky whom I know and met with last week from the Injured Workers Consultants. They have that same concern you've raised. I think it's very important that we try to make all officers of agencies as independent as possible.

But if we can go back to that other gentleman, the previous speaker, you mentioned a couple of incidents. Are those one-offs or is this far more widespread?

Ms. Linda Vannucci: No. With the exception of the man who fractured his arm because there was no guardrail on a scaffold, the other three have happened repeatedly. They're examples of not just single cases of being told to go to employment insurance as opposed to reporting. That's happened multiple times over the years.

Mr. Arthur Potts: And do you think the $500,000 fine that we're putting in is too onerous for repeat

offenders, having a chance to step up fines against corporations at that level? Is that too onerous?

Ms. Linda Vannucci: Well, I think there's some precedent for it because it exists in the Occupational Health and Safety Act for violations of that act on prosecution.

Mr. Arthur Potts: Great. Excellent.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation. It was unique and interesting, and you brought forward a perspective that I think that the committee needs to hear.

But I would ask about the issue of claims suppression. We heard just now—and you would have heard Mr. Liversidge's comments as well.

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Is there any empirical evidence that suggests that claim suppression is on the rise in Ontario? What would you have to say in terms of offering the committee some empirical evidence? Clearly, you know of some anecdotal examples, and I wouldn't dispute that it is happening, obviously, if you say so. But have there been any studies that show that it is indeed a big problem and perhaps on the rise?

Ms. Linda Vannucci: Interestingly enough, the report that he referred to, the Prism report, is referred to—I saw earlier the submission of our friends at Injured Workers' Consultants. Their submission refers to the Prism report as well, to prove the opposite, which is—I think it's cited in the Prism report—7% of employers suppressing claims. So I think there is some objective evidence, exactly in the report that was referred to earlier.

Mr. Ted Arnott: And it's already an offence to suppress claims under the Workplace Safety and Insurance Act, correct?

Ms. Linda Vannucci: It's an offence insofar as it's an offence for the employer not to report an accident that requires health care, or where there's lost time, within three days of that accident or injury. So, yes, that already is an offence. Under the new bill, this would be, I think, the employer counselling workers not to report.

Mr. Ted Arnott: In terms of the Fair Practices Commissioner, you're suggesting, I guess, that there needs to be independence or it's not going to work, right?

Ms. Linda Vannucci: That's our suggestion.

Mr. John Bartolomeo: That is correct. Having the office being beholden to the WSIB defeats the purpose.

Mr. Ted Arnott: All right. Thank you very much. I appreciate—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arnott. Just before dismissing our presenters: Ms. Vannucci, I'm hearing either Michigan or Chicago. I have to ask, which is it?

Ms. Linda Vannucci: Upstate New York, near Syracuse.

The Chair (Mr. Shafiq Qaadri): All right, thank you. Thanks for your deputation on behalf of Toronto Workers'—yes, Ms. Forster?

Ms. Cindy Forster: Just a question: What is the cut-off for amendments?

The Chair (Mr. Shafiq Qaadri): Yes, I'm about to announce that. Amendments are due at 12 noon on Monday, November 30. As you know, we'll be meeting for clause-by-clause on December 3 all day, from 9 to 10 and then 2 to 6.

Ms. Cindy Forster: Can I ask when the Hansard will be ready? Can Hansard be ready by tomorrow at noon, so that we actually are able to formulate amendments?

The Chair (Mr. Shafiq Qaadri): Hansard?

The Clerk of the Committee (Ms. Tonia Grannum): There's already a priority request for another committee, so we might be a bit more delayed.

Ms. Cindy Forster: Well, just for the record, the government is time-allocating all of these bills; they're pushing them through. So we need to have the Hansard. We need to have the deputations' records so that we, as official opposition parties, have the opportunity to actually make amendments to these bills. I'm just putting it on the record that we need to have the Hansard to do that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster.

Mr. Mike Colle: We have written submissions too, don't we?

The Chair (Mr. Shafiq Qaadri): Yes. The floor goes to Mr. Arnott, please.

Mr. Ted Arnott: I agree completely with what Ms. Forster has indicated. If this committee process is going to be meaningful, there has to be some period of time, after the public hearings conclude, for the respective caucuses to consider the issues that have been raised at the public hearings, develop the amendments and present them to the committee, before they are considered at the clause-by-clause stage.

I would suggest that we don't have sufficient time in this circumstance to do the job that we should be doing as legislators. We'll scramble and we'll get our work done, but we won't have sufficient time to do the review that we would want to do normally.

I would just ask the government members to take that back. I understand the government wants to get this bill passed as soon as possible, but there still has to be a reasonable legislative process, including allowing the standing committees to do their work—

The Chair (Mr. Shafiq Qaadri): Thank you. Our presenters are officially dismissed. Thank you.

Ms. French, then Ms. Forster, and the government side.

Ms. Jennifer K. French: Yes. As Mr. Colle had pointed out, we have some written submissions, but certainly the questions and comments and discussion here are not reflected in those written submissions, nor did the presentations, obviously, follow the submissions verbatim.

I would again echo my colleague's point that if there's insufficient turnaround time to be able to process, then this is just an act of futility, or it's strictly for appearances. It really ought to be for the benefit of strengthening the legislation, ultimately.

The Chair (Mr. Shafiq Qaadri): Ms. Forster.

Ms. Cindy Forster: I would suggest that if, in fact, this is what we're going to see for the next two and a half years, the Legislative Assembly needs to go back and review how many staff they actually have working, so that we can get Hansards in a timely way. With the existing staff, I know that it's going to be difficult, so maybe they need to go back and look at hiring some people.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Forster. Just to let you know, they have two approaches for that request: One is to your House leaders and the other is to the Board of Internal Economy. I would encourage you to contact them directly. Mr. Potts?

Mr. Arthur Potts: I just want to correct the record. Bill 109 was not time-allocated, so let's be very clear about that. I appreciate that there's a tight schedule, and Hansard needs to be done in order to have a fair opportunity to review.

The second part I'd like to be clear about is that the time deadline for amendments is strictly administrative, that any one of us can bring an amendment the day of clause-by-clause and bring it forward. It just isn't as convenient for our Clerk—to have copies available for us to all work from.

The Chair (Mr. Shafiq Qaadri): Ms. Forster?

Ms. Cindy Forster: I would say that that isn't correct. Not anyone can bring an amendment after the clock stops because we've had situations in this last year where we missed deadlines on amendments and we were not able. We missed deadlines five minutes after the time limit and we were not allowed to put any of those amendments forward.

The Chair (Mr. Shafiq Qaadri): All right. There are lots of things to deconstruct here. I think I'll perhaps do that off-line, if necessary.

Committee is adjourned.

The committee adjourned at 1536.

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Also taking part / Autres participants et participantes
Ms. Jennifer K. French (Oshawa ND)
Mr. Wayne Gates (Niagara Falls ND)
Mrs. Lisa Gretzky (Windsor West / Windsor-Ouest ND)

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Ms. Tonia Grannum

Staff / Personnel
Mr. Andrew McNaught, research officer,
Research Services

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