Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Official Report of Debates (Hansard)

SP-11

Standing Committee on Social Policy

Working for Workers Act, 2022

2nd Session
42nd Parliament

Tuesday 29 March 2022

Chair: Natalia Kusendova
Clerk: Vanessa Kattar

Journal des débats (Hansard)

SP-11

Comité permanent de la politique sociale

Loi de 2022 visant à oeuvrer pour les travailleurs

2e session
42e législature

Mardi 29 mars 2022

Présidente : Natalia Kusendova
Greffière : Vanessa Kattar

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House Publications and Language Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service linguistique et des publications parlementaires
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1710-9477

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 29 March 2022

Mardi 29 mars 2022

The committee met at 0901 in room 151.

WORKING FOR WORKERS ACT, 2022
LOI DE 2022 VISANT À OEUVRER POUR LES TRAVAILLEURS

Consideration of the following bill:

Bill 88, An Act to enact the Digital Platform Workers' Rights Act, 2022 and to amend various Acts / Projet de loi 88, Loi édictant la Loi de 2022 sur les droits des travailleurs de plateformes numériques et modifiant diverses lois.

The Chair (Ms. Natalia Kusendova): Good morning, everyone. Happy Tuesday. The Standing Committee on Social Policy will now come to order. We are here to resume public hearings on Bill 88, An Act to enact the Digital Platform Workers' Rights Act, 2022 and to amend various Acts.

As a reminder, the deadline for written submissions is 7 p.m. on Tuesday, March 29, 2022. Legislative research has been requested to provide committee members with a summary of oral presentations and written submissions as soon as possible following the written submission deadline.

The deadline for filing amendments to the bill is 10 a.m. on Wednesday, March 30, 2022. The Clerk of the Committee has distributed committee documents virtually via SharePoint.

As always, please wait until I recognize you before starting to speak.

As a reminder, each presenter will have seven minutes for their presentation. Following all three presentations, there will be 39 minutes of questioning for all three witnesses, divided into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition members and two rounds of four and a half minutes for the independent member.

DECENT WORK AND HEALTH NETWORK
PARKDALE COMMUNITY LEGAL SERVICES
WORKERS' ACTION CENTRE

The Chair (Ms. Natalia Kusendova): Now, I am delighted to welcome our first group of presenters this morning, who are all appearing via video conference. We will begin with Jesse McLaren, who is the member of the Decent Work and Health Network. Welcome. You have seven minutes for your presentation and you may begin by stating your name for the record.

Dr. Jesse McLaren: My name is Jesse McLaren. Thank you for the opportunity to speak.

I'm an emergency physician and an assistant professor in the department of family and community medicine at the University of Toronto. I'm also a member of the Decent Work and Health Network, which is a group of health providers advocating for better health by addressing working and employment conditions. As both a front-line health provider and an advocate for the social determinants of health, I want to talk about the health impacts of precarious work in general, misclassification in particular and the resulting health concerns of Bill 88.

Gig work is precarious work, which is unhealthy for a variety of reasons. First of all, wages are a key social determinant of health because they provide access to the other social determinants of health, including healthy food and safe shelter, in addition to prescription medication. As a result, population health follows a predictable income gradient for those with low incomes of higher rates of illness. Secondly, low wages reflect precarious employment conditions. Low wages are associated with part-time, temporary work without job security, which is itself independently associated with adverse physical and mental health outcomes. Thirdly, low wage and precarious employment are also associated with a lack of employment protections, like unionization.

Digital platform workers experience all of these aspects of precarious work: low wages, precarious employment and the lack of employment protections. And these have increasingly been recognized as detrimental to health, especially during the pandemic.

As Dr. Theresa Tam, Canada's chief public health officer, explained, "COVID-19 ... magnified the consequences of precarious employment conditions" of "low-paid work, part-time work, irregular hours faced by many working people in Canada, who are disproportionately women, people who are racialized, immigrants, and people with disabilities. This is increasingly recognized as an important social determinant of health and has been linked to a number of adverse worker, family, and community health outcomes."

In addition to experiencing the negative health consequences of precarious work, digital platform workers also

face the additional barrier of misclassification, and this is also increasingly recognized as a health issue. As the American Journal of Industrial Medicine explained five years ago, "Many 'gig' workers are classified by their platform 'employer' as independent contractors ... these workers are denied access to the government labour safety net ... denying workers critical protections and legal benefits.... Denying injured workers coverage under ... workers' compensation insurance can lead to financial ruin for the worker and his or her family, and transfer the cost of injury care to the public when it should be borne by the employer ... additional steps must be taken to develop healthier work design and arrangements that safeguard the health and well-being of all workers, regardless of the work arrangement...." In other words, the way to promote the health of digital platform workers is through universal protections for all workers, and health researchers in Canada have made the same recommendations.

Dr. Ellen MacEachen at the University of Waterloo's school of public health studied the health impacts of digital platform couriers during the pandemic. These included being exposed to COVID-19 without access to PPE or physical distancing and the pressure to work while sick without paid sick days. As the research found, "Being (mis)classified ... is the most systemic driver of the risks ... that platform workers face...."

It "places workers outside of employment standards protections, including minimum wage, overtime and vacation pay. It also weakens our access to benefits from employment insurance in the event of unemployment." And it "removes workers from many occupational health and safety protections, such as workplace inspections and the right to refuse unsafe work." Her research was clear and made a number of recommendations, including classifying digital platform workers as employees.

In other words, public health research from before and during the pandemic identified precarious work and misclassification as threats to health, and these studies have called for an end to misclassification and for the expansion of universal standards.

In this context, Bill 88 not only fails to address the health concerns of digital platform workers and ignores evidence-based recommendations, it could actually make digital platform work even more precarious.

First of all, Bill 88 says nothing about misclassification, which is the main health concern specific to digital platform work. Rather than ending misclassification, Bill 88 allows it to continue which will maintain barriers to health protections, including sick leave and injury compensation.

Secondly, Bill 88 could further entrench economic inequity. It states that, "Minimum wage shall be paid for each work assignment performed" rather than for each hour worked. This means that digital platform workers could be denied wages for hours worked outside of their so-called work assignment which would actually lower their income. This is also a dangerous precedent. What if this logic were applied to other essential workers? Should I and other front-line health providers be paid only for our work assignment at the bedside when we are directly seeing and treating patients? Should we be denied wages when we step away from the bedside, from that specific work assignment, in order to write orders, interpret X-rays, speak with consultants and review another chart before seeing another patient?

Thirdly, Bill 88 ignores evidence-based recommendations. Public health research has been clear about the health impacts of misclassification and low wages and called for an end to misclassification and for the expansion of universal access to labour standards, but Bill 88 goes against these recommendations.

If there's one lesson of the pandemic, it's that essential work should be valued rather than devalued and that essential workers should be protected, both for their own health and for our collective well-being, but Bill 88 fails to provide this protection, and it fails the basic test of any medical intervention: First, do no harm. Thank you.

The Chair (Ms. Natalia Kusendova): Next, we will hear from Mary Gellatly, who is a community legal worker representing Parkdale Community Legal Services. Welcome. You have seven minutes, and you may begin by stating your name for the record.

0910

Ms. Mary Gellatly: Hi. Thank you. My name's Mary Gellatly. Thanks for the opportunity to present today. I'm going to focus on schedule 1. I'm representing Parkdale Community Legal Services. We work with people in low-wage and precarious work, including those who work for app-based platform companies. I can tell you from that work that the dominant feature of platform companies is misclassification of its employees as independent contractors. There's nothing new about this business model of misclassification. The problems that gig workers face today are the same as those that have been faced by countless workers in Ontario for generations.

When introducing Bill 88, Labour Minister McNaughton said, "No one working in Ontario should ever make less than minimum wage for an hour's work." We agree with that, but Bill 88 will not ensure minimum wage for workers. It will actually ensure that platform workers earn less than minimum wage.

The proposed Digital Platform Workers' Rights Act states that, "Minimum wage shall be paid for each work assignment performed by a worker." Platform companies define "assignment time" or "engaged time" as only that time when an order is picked up or a passenger is in the car. It doesn't include the time spent waiting for an order. It doesn't include the time spent travelling to pick up an order or a passenger. It doesn't include the time spent travelling back to locations where future pickups are more likely. It doesn't include the illegal deductions from wages that are a feature of the current platform business model. That is, drivers and delivery workers pay a lot of platform companies' costs of doing business: Workers provide their own cars and bikes; they pay for gas, insurance and maintenance out of their own pocket. This further reduces their real wages.

In San Francisco, where platform workers only get paid for engaged time on assignment, a study found that when

expenses in both unpaid work and paid work time were fully accounted for, a substantial portion of the workforce earned less than minimum wage. That is the same model that's being proposed with Bill 88. In that same study, researchers found that at least 78% of the workforce are people of colour and 56% are immigrants. Platform workers in Ontario report the same trends here. If Bill 88 is allowed to proceed without changes, it will legislate substandard minimum wages for a largely racialized workforce. This must not happen.

Secondly, the government says that Bill 88 would make sure tips and gratuities go to workers. But the reality is that's already the law in Ontario, for tips to go to workers without deductions. What really needs to happen is to stop misclassification of gig workers so that they can get this protection and all other ESA protections.

Third, Bill 88 says it will give workers information about how their wages are calculated, how and why a worker might be penalized getting work and require notice of termination or suspension over 24 hours. But, as I noted, if the misclassification of gig workers was ended, then workers would enjoy all of these rights under the ESA.

Fourth, the government says that Bill 88 will improve working conditions for gig workers, but this is not the case. Bill 88 leaves workers unprotected from being misclassified as independent contractors. Misclassification means that workers are denied minimum employment rights and benefits. Platform companies argue that workers' support of flexibility means that they don't want protection for their employment rights. This is not supported here in Ontario where platform workers have been organizing to access their employment rights.

Foodora workers voted almost 90% in favour of unionizing in 2019 only to have that challenged at the labour board by Foodora. The Ontario Labour Relations Board ruled in 2020 that Foodora workers are not independent contractors and were able to unionize. A class action suit is currently before the courts to challenge Uber's misclassification of employees as independent contractors. There are many other efforts by platform workers in other jurisdictions to assert their employment rights that have been successful. Platform workers successfully unionized in Norway in 2019. Employees successfully sought their employment rights through the courts in California in 2018, and in the Netherlands, UK and Spain in 2021.

The prevailing determination is that platform workers are employees. The problem with the existing tests to determine employee status is that they involve complicated multifactorial tests which place all the burden on workers themselves to challenge and prove their employment status. Platform employers know that most workers don't have the time, the resources or the power to be able to undertake this challenge. That is why this systemic misclassification is so successful.

There is an easy fix to misclassification: Legislate a new, simple test, known commonly as the ABC test. The ABC test provides that a worker is an employee, unless a hiring entity can establish three factors: (a) a worker is free from its control, both factually and under the terms of the contract, (b) a worker performs work outside the usual course of the company's business and (c) a worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

That's it: a simpler, clearer test for the presence of an employer-employee relationship. It places the onus on the company with the power to define the relationship and contains simple, clear criteria. It removes some of the key barriers employers face in enforcing their rights as employees, not independent contractors.

I just might add—and I'm happy to talk about it in questions—with respect to schedule 2 of the Working for Workers Act, it contains a rather alarming carve-out from employment standards for so-called business and information technology consultants.

The Chair (Ms. Natalia Kusendova): One minute left.

Ms. Mary Gellatly: Okay, thank you.

We recommend that this section should be deleted. Thank you very much.

The Chair (Ms. Natalia Kusendova): Next, I would like to welcome Deena Ladd, the executive director of Workers' Action Centre. Welcome, you have seven minutes for your presentation and you may begin by stating your name for the record.

Ms. Deena Ladd: Hi. My name is Deena Ladd and I am the executive director of the Workers' Action Centre. Our centre works with thousands of workers every year on providing assistance, employment, information and support when dealing with violations of employment standards, facing unfair treatment and discrimination. I will be specifically speaking to schedule 1 of Bill 88.

For many years, we have been speaking out on the critical need to address employers' misclassification of workers as independent contractors or self-employed workers in order to avoid their employment responsibilities. We have worked with workers in sectors such as construction, cleaning, sales delivery and other types of business services where employers wrongly classify workers, resulting in negative consequences for health, employment protection as well as access to statutory benefits and income support.

Media, public consultations, research papers and investigations over the past 15 years have uncovered the horrific consequences for workers when injured, when dealing with wage theft, not being able to get employment insurance, working 60 to 80 hours a week with no overtime and certainly no rest periods. Most recently, we've seen this strategy used by platform app-based companies that want to deny their employees basic entitlements of work.

I want to emphasize that what we're talking about is really basic entitlements, right? We're talking about public holiday pay, overtime pay, rest periods, vacation pay, termination pay and minimum wage. We're not talking about pensions or paid sick days or stock options, just really basic labour rights.

In June of last year, in 2021, the Ontario government announced the Ontario Workforce Recovery Advisory Committee, OWRAC, to examine three areas, one of

which was specifically to support digital platform workers, especially with what they had gone through during the pandemic: delivering food to homes, driving and courier work to support us to stay at home during a raging pandemic.

In July, we organized a special consultation with members of OWRAC to meet directly with workers. On July 28 of last year, members of committee met with platform app-based workers, as well as workers from trucking and cleaning sectors struggling with misclassification. Since that time, many workers who have worked for the platform app-based companies have spoken up about the conditions faced during the pandemic: the poverty, the working conditions, the lack of standards and the burden of business being put on their shoulders. This echoes platform app-based workers around the world and what they need to keep them safe. So whether it's workers from the UK, France, Germany, the United States or Canada, there has been one clear message, that workers should be correctly termed as employees and gets the basic—and I mean really basic—fundamental entitlements and coverage of labour laws.

The government's message to workers, by introducing Bill 88, is sending a crystal clear message: "We're turning our backs on you. We don't think you deserve basic labour rights" and "We don't think you even fully deserve the minimum wage."

Workers will have to continually continue to individually make complaints to the Ministry of Labour in order to access basic rights on the job. Now, we know through our work at the centre that this is incredibly difficult, because workers can't afford to jeopardize their employment. That's how people feel when they actually have to take on their employer, because it's not anonymous.

0920

It's also really shocking that Bill 88 specifically states that minimum wage should only be paid for each work assignment performed by a worker. Platform companies define "assignment time" or "engaged work" as only that time when an order is picked up or a passenger is in the car. It doesn't include the time spent waiting for an order or when you are travelling to pick up an order or a passenger. A 2020 UC Berkeley institute on labour and employment study estimated that workers spent cruising without a passenger 35% of their work time. We also know that, in addition to all the times that workers are waiting for their next job, they are using gas and they're paying for the cost of repairs and usage on their vehicles and things like insurance.

Given that this is also a predominant workforce that is mainly immigrants, that is mainly newcomers, racialized workers that are doing this work, what Bill 88 starts to do is it actually institutionalizes racism in the labour market by designating this group of workers substandard working conditions, which is really shocking.

Finally, this bill is certainly not working for workers. It's working against everything that workers have stated that they need in order to improve their working conditions and their health. The fact that we have to sit here and debate whether workers are even entitled to basic labour rights is, frankly, shocking, given that we're coming out of a pandemic where we've been singing the praises of essential workers as heroes who have helped us stay at home. It is the government's responsibility to ensure that all workers, not just a select few, have basic labour rights. If you pass this bill and do not ensure that workers have basic labour rights, Ontarians will be crystal clear again on your position of protecting essential workers, which is basically that you don't care. You don't care about essential workers. You're fine with keeping food delivery workers in sub-minimum wage jobs—

The Chair (Ms. Natalia Kusendova): One minute.

Ms. Deena Ladd: —with no basic protections. That's going to be a crystal clear message for all of us in the next few weeks if you pass this legislation.

I'm finished. Thanks very much.

The Chair (Ms. Natalia Kusendova): Thank you very much. We will begin now our rounds of questioning this morning. We will begin with the official opposition for seven and a half minutes. MPP Sattler, go ahead.

Ms. Peggy Sattler: Thank you to the Decent Work and Health Network, Parkdale Community Legal Services and the Workers' Action Centre for all of the incredible work and advocacy and organizing that you do, and also for taking the time to come here today. Certainly, the themes from your presentations very much reflect what we heard yesterday from gig workers themselves as well as some of the organizations that presented on behalf of gig workers.

A common issue that you have really highlighted is the issue of misclassification—the rampant misclassification that occurs. We heard yesterday from Saurabh Sharma, who was a gig worker who successfully took the Ministry of Labour complaint about misclassification and got a ruling from a Ministry of Labour investigator. He talked about the fact that he needed, I think he said, 3,000 pages of documents in order to successfully pursue that claim.

I think that you are all aware of a private member's bill that I introduced to prevent worker misclassification, to implement the ABC test. I appreciate Mary's reference to the ABC test. I'd be interested in your comments on whether that is the right approach: to clarify and simplify the test for a worker in the Employment Standards Act and also put the onus on employers to prove that their worker is not an employee rather than forcing workers to go through this incredibly cumbersome, time-consuming and difficult process to challenge their status. I'm going to start with you, Jesse.

Dr. Jesse McLaren: I think that the main thing we have to do when looking at the health of precarious workers in general is start with the right diagnosis. When it comes to gig workers, they have been crystal clear that misclassification is their main barrier to health.

I want to quote from a study that was done on app-based bicycle couriers in Toronto—so right here—and it found that 86% of respondents said they were independent contractors, and as one participant commented, "The company imposed the classification of independent contractor to escape the legal responsibilities any company has towards

its employees." In unprompted previous comments, participants also raised the following concerns: "It's dangerous and unpaid." "This job is more precarious by the day and is not a livable wage." "This is an unsustainable economy," and, "Workers are being exploited by these app-based companies."

Again, this is the literature that we have to go by in terms of the health consequences of misclassification. Any legislation that does not take this on directly is not actually working for gig workers.

Ms. Peggy Sattler: Thank you. Mary?

Ms. Mary Gellatly: I took a look and reviewed your bill, Peggy, and it was really, really good in terms of setting out the ABC test. I mean, we work with non-unionized, low-wage folks and represent them trying to go forward. But in talking to workers, most workers don't file claims while they're on the job because they know that there's very little protection from losing their job, so most people file afterwards. That means there's not the ability for gig workers, while they're working, to try and challenge misclassification. It's only those few after they've been terminated or disconnected—whatever the term is for the sector.

Having the ABC test which then is more proactive, by saying that the onus is on the employers to determine if someone is an employee or not an employee, it makes it a much more proactive effort. Certainly, we saw how effective it can be in California, where the ABC test was brought in a few years ago. It was very effective in clearly determining, on a proactive basis, that platform workers were employees. It was so effective with its clear criteria that Uber, Lyft and a bunch of companies got together and put together over $200 million to bring forward proposition 22 to basically carve out and separate out workers from protection under the ABC test, and so, unfortunately those workers aren't there. But it shows how effective it can be, on a proactive basis, to clarify employee status.

Ms. Peggy Sattler: And Deena?

Ms. Deena Ladd: Hi, yes. As I mentioned, over the past 15, 20 years, this is a common issue that we have been dealing with where workers are forced to—at great risk, in other sectors before the platform app-based companies came up in the scene—take on their employers. It's an incredibly difficult, onerous process. Most people can't jeopardize their jobs. We're coming out of a pandemic where people are even in a more vulnerable situation than ever before and have to put food on the table. So to take on a large corporation and challenge the status is very difficult.

The Chair (Ms. Natalia Kusendova): One minute.

Ms. Deena Ladd: It's the government's responsibility to make sure that workers understand what their rights are and understand their designation. This has been an issue that workers have faced for years, and that's why misclassification was made illegal, frankly, in 2017. Now what we need is the ABC test and the legislation that you brought forward, Peggy, to make it clear for workers to be able to advocate for themselves and for everyone to be really clear what the designation is. Just like Revenue Canada is clear on what workers are, we need to have that in employment standards and we need to stop with this messing about with people's lives.

0930

Ms. Peggy Sattler: Once there is this separate legislation that enshrines digital platform workers as somehow lesser and different than other workers—

The Chair (Ms. Natalia Kusendova): Thank you so much. We are out of time.

We will now go to MPP Fraser.

Mr. John Fraser: I want to thank all the presenters for being here this morning and presenting to us and for the work that you do.

It's clear the government is creating a second class of workers here in Ontario, ones who don't get things like vacation pay, the right to representation, the right to termination pay when you're terminated without cause. But what I'd like to focus on with my question is the fact that they have no health and safety protections. This is nothing new, because we've seen that through contract work in this province for probably more than a decade, and there are clearly no protections in this bill for workers at all.

So each of you, in your experience—I know there's not a lot of time if we try to share that time; there's only about four minutes left—what's the consequence of workers not being covered by WSIB for a workplace injury? What's the consequence? What happens to people? We'll start in the order that people presented.

Dr. Jesse McLaren: If workers are not covered for injuries and they lose wages, that only adds insult to injury and compounds their health issues. We've seen that a predictable consequence of that in the pandemic is actually that workers, even while sick and while injured, will continue to go to work. That was consistently flagged as an issue in wave after wave after wave, that workers are being forced, because of employment conditions and precarity, to go to work sick, despite their injuries, on top of their injuries, furthering their injuries. We clearly need to raise the safety net for all workers so that workers can actually better avoid injury at work, be compensated, and if they are injured, safely stay away from work when they need to for public health reasons. Again, before the pandemic, this was clear, and I think the sixth wave of the pandemic has made this even more clear.

Mr. John Fraser: Thank you. Mary?

Ms. Mary Gellatly: Great. I think they don't have the health and safety protection because they are misclassified as independent contractors. That means they don't have health and safety committees, they don't have health and safety reps that can challenge the kind of conditions that—some workers talk about what happens is a really intense pressure to speed up, because they're not getting paid for all of the hours and the time they work, they're only getting paid for the delivery. So there's this intense pressure, in order to try and make a bit of a living, to speed up, to go as fast as possible, and these are people who are on bikes on roads and so face incredible dangers. Certainly addressing misclassification and bringing them clearly under the health and safety act would be an important step forward.

The Chair (Ms. Natalia Kusendova): Go ahead, Deena.

Ms. Deena Ladd: I think what we see at the Workers' Action Centre is that workers are dealing with the profound impacts of injuries. Jesse and Mary have talked about people having to continually work, but those workers who also have serious injuries then are forced into deep poverty. They don't have access to workers' compensation. They've not been paying into employment insurance, so there's no access to paid sick leave. We really are fundamentally taking away people's access to any basic safety net programs.

Again, the contradictions kind of slap you in the face. Here are these essential workers delivering food, delivering all of these kinds of products like medication and things we need so that we can stay at home, but we're actually putting them in complete jeopardy in doing that work. So I think that we should just ensure that everyone has the ability to go home at night and be with their families, just like we want to. We want to be able to work—

The Chair (Ms. Natalia Kusendova): Thank you so much. We are out of time.

Now on to the government, with MPP Anand.

Mr. Deepak Anand: I just want to thank all the presenters. Thank you so much for coming.

My question is to Mary. I noticed that you said this problem has been for decades. What do you mean that this problem has been for decades?

Ms. Mary Gellatly: Absolutely, thank you for the question. Misclassification has been going on in different sectors for a very long time. We certainly see it in the trucking industry, where truckers are misclassified as independent contractors. On the federal level it's really quite a problem, which then leads to health and safety problems, substandard wages etc.

We also see it in other sectors, in beauty services—nail salon workers are misclassified as independent contractors, leaving them to try and deal with the health and safety risks of that sector—and cleaners. But we even see it, strangely, being used by employers to shift liability from themselves on to the workers. It is sometimes happening in restaurants, where maybe the chefs are classified as independent contractors, but even in the front of the house.

What happens when you don't have a clear, proactive approach on misclassification is that more and more employers see that as an opportunity to try and shift their liabilities down the chain of minor subcontracting [*inaudible*]. We've seen that, so to me, it's not surprising that the platform industry comes in and has seen this gap in the legislation and has systematically used it to try and get market share.

Mr. Deepak Anand: Thank you so much. Madam Chair, MPP Martin would like to take the next one.

The Chair (Ms. Natalia Kusendova): MPP Martin.

Mrs. Robin Martin: Thank you to all the presenters. I want to start with the Workers' Action Centre, Ms. Ladd. You spoke about a consultation which happened in July as a result of an invitation to consult from the Ontario Workforce Recovery Advisory Committee. I think you said that there was at that point an opportunity for actual digital platform workers etc., and I guess yourself, to meet with the Ontario Workforce Recovery Advisory Committee. I think you said it was July 28. Can you just describe a bit what that consultation was and who was there?

Ms. Deena Ladd: Absolutely. We met with the chair of the committee at that point, who was Susan McArthur. There were two others; I think it was Vasi Bednar and another person. When we had first met with Susan McArthur, we were saying, "If you're going to make a decision"—you know, the purpose of this committee is to look at what digital workers have gone through during the pandemic, and what supports are needed. So when we were speaking with Susan, we said, "Why don't you meet with workers directly?" She was very open to that, and so there were workers who met with her who worked for SkipTheDishes, Instacart, Uber Eats, Uber, DoorDash—basically all the main platform apps. As well, we had workers from the trucking sector and the cleaning sector, which are also dealing with misclassification. We had workers also delivering for some other restaurants.

0940

The main issue that happened in that meeting was that the workers talked about how incredibly important it was to be designated as employees and to fundamentally deal with and to correct the issue of misclassification. This really was something that they fundamentally dealt with—

Mrs. Robin Martin: Sorry, Ms. Ladd, I just really wanted to ask you about who was in attendance first. Was Gig Workers United represented, for example, or some of their people?

Ms. Deena Ladd: I think some of their members were there, but also there were members from our organization there and other workers who had contacted us. We have a lot of workers who call us when they've had problems on the job, so then we invited them to attend.

Mrs. Robin Martin: Okay, thank you very much. Yesterday we had heard that there were no consultations, so it's great to hear that some of the gig workers—particularly, I think, some of the individuals who were even here presenting—were actually invited to these consultations. I know Gig Workers United was here presenting as well.

The second thing I just wanted to ask about was—and perhaps this is best put to Mary Gellatly. Ms. Gellatly, if you could show me where in the legislation the phrase "independent contractor" in Bill 88 appears. I haven't been able to locate it.

Ms. Mary Gellatly: I'm trying to remember, having read the bill. I don't think it does.

Mrs. Robin Martin: Thank you. That's exactly what I was thinking myself. I don't think it does. I'm also a lawyer. I couldn't find it in the legislation.

As far as I can see, then, this legislation does not classify workers at all, and it doesn't specifically preclude any classification of workers.

The Chair (Ms. Natalia Kusendova): One minute.

Mrs. Robin Martin: This interesting discussion about misclassification, I think Ms. Ladd indicated it's "employer misclassification"—her words, I quote—but not government classification whatsoever. That has been left open, as I understand it, in this legislation, and whatever courts determine, I guess, will be what the classifications might be going forward.

So I don't think that's the purpose of this legislation. I think the purpose of this legislation really is to try to go into a space where workers were working and not create a model but react to an existing model of work and try to provide some protections for workers in an evolving space where previously those protections may not have existed or may have not been clear. We wanted to make sure that they had some protections.

My next question really is—

The Chair (Ms. Natalia Kusendova): I'm so sorry. We are out of time.

Mrs. Robin Martin: Oh, sorry. I'll have to come back. Thank you.

The Chair (Ms. Natalia Kusendova): We will now go to the official opposition. MPP Sattler?

Ms. Peggy Sattler: I want to carry on from MPP Martin's question. Will enshrining digital platform workers as somehow different and lesser than other workers in a bill have an impact on the ability of workers to challenge classification under the Employment Standards Act? I'll go to Deena first. You're nodding your head.

Ms. Deena Ladd: That's the whole point: the fact that because, as MPP Martin said, workers are going to have to keep going through the legal system to try and get their basic rights—which is not the purpose of employment standards. The employment standards should actually be incredibly clear in terms of what rights are in the workplace. The fact that this government, the government in power, is actually going to be institutionalizing a process that the most vulnerable workers, the ones who are non-unionized, the ones who can't even get proper, decent minimum wage—and that they're actually not allowing them to get access to employment standards, by specifically saying that they're only entitled to minimum wage in a certain way, actually puts workers in a more difficult situation and actually institutionalizes lower standards. The fact that they're putting more responsibility on the most vulnerable workers in our workforce, who have been deemed by this government as heroes and essential workers during the pandemic—it's actually like a slap in the face, and it's institutionalizing poor working conditions and, as I mentioned in my presentation, institutionalizing systemic racism, because the majority of these workers are newcomers, are immigrants, are racialized workers and people who are trying to do this work when first coming to Canada, as well—and a lot of young people, as well, are in these jobs. So, yes, absolutely, this is going to make it incredibly difficult, and it has been difficult, because that's what the situation has been.

The Chair (Ms. Natalia Kusendova): MPP Gates.

Mr. Wayne Gates: Thanks very much for your response to Peggy's question. Obviously, the other side is trying to send out a mixed message here. The reality is that this is a bill called Working for Workers, and it doesn't work for workers—not at all.

I'm going to ask all three of you, really quick, to discuss—because I want to make sure I get to my last question. This question is for all three presenters today: Why do you think this government doesn't believe that all workers in the province of Ontario should be covered by the ESA? That's really what the issue is here under Bill 88. So if all three of you could answer that, that would be great.

Mrs. Robin Martin: Chair, could I—

The Chair (Ms. Natalia Kusendova): Do you have a point of order, MPP Martin?

Mrs. Robin Martin: I do have a point of order. I just wondered if questions are allowed to elicit motive, as the rule is members cannot impugn motive. Every question MPP Gates seems to ask in this hearing is about motive.

The Chair (Ms. Natalia Kusendova): I will just caution MPP Gates on his language. Thank you.

Let's go back—

Mr. Wayne Gates: Actually—I'll be honest with you—I believe all my questions have been fair and balanced. I'm just trying to get to the truth out here. That's my job.

All three of you, could you please answer my question? That would be great. Thank you very much. I appreciate it.

Mrs. Robin Martin: So you will allow it, Chair?

The Chair (Ms. Natalia Kusendova): My ruling is that I will caution the member on the language, and we will resume the questioning. We have four and a half minutes to go through.

Mr. Wayne Gates: Thank you.

Please answer the question. Thanks.

Ms. Deena Ladd: Maybe I'll start, very quickly: I think around the world what we've seen, as mentioned before, is that governments have been lobbied seriously by platform app-based companies. We saw in California millions and millions of dollars being put forward to basically support the removal of workers having basic access to employee status. We've seen that in the UK, in France. We're seeing it happening in Washington right now as well. So I think that by not designating gig workers or platform app-based workers as employees, they are bending to the will of massive corporations that have been fighting for misclassification, the ability to misclassify workers. It's very clear.

Ms. Mary Gellatly: I would just add that I think it has been so clear, the substandard kinds of conditions that platform workers have been facing, and the government had been lobbied by Uber. The government felt it had to do something, but it's unfortunate that it has taken this really dangerous path of setting platform workers as somehow separate and not entitled to be paid for all hours worked. I do think, in part, it is to try to satisfy the platform lobby, trying to get separate and different standards for this class of workers.

Dr. Jesse McLaren: I think that regardless of the motive or the intentions that the impact is the same, which is to maintain really unhealthy gaps in labour protections. The World Health Organization more than a decade ago called for closing the health gaps, and we now have had two global pandemics—H1N1 in 2009 and now, COVID—that have exposed the deadly consequences of leaving the gaps open, whether it's gaps in wages, gaps in paid sick days and, specifically here, gaps in classification. Digital platform workers themselves have been clear about the impact of these health gaps. Research has been clear about the deadly health impacts of these gaps. The problem with the legislation is that, yes, it does not actually address any of this, and that's really the problem. If somebody comes in with a heart attack and they feel weak, and I give them a pillow, that's not actually helping the underlying reason; we have to get to why they are suffering and the cause that they've identified and the treatments that have been recommended by public health researchers. That's been clear—to close the gaps and not to leave them wide open.

Mr. Wayne Gates: I appreciate the response.

I'll make a statement and then I'll ask another question. The affordability—particularly in our bigger cities where a lot of these jobs are, quite frankly, the costs of rent, housing, food—is an incredible challenge. Why would any worker in the province of Ontario be asked to work for 40% to 50% less than the minimum wage, which could be somewhere between $7.50 and $8.25 an hour? I think in one of the richest provinces in the country and one of the richest countries in the world, going backwards means absolutely no sense to me.

0950

The Chair (Ms. Natalia Kusendova): One minute.

Mr. Wayne Gates: So I'll ask you: Why do you think this government would create a bill that would make a second tier of worker? Why not label them all as employees and be covered under the Employment Standards Act? Whoever wants to jump in, you've only got 40 seconds, so go quick. Jesse, go ahead.

Dr. Jesse McLaren: The pandemic has really brought essential front-line workers together and has really made a sense that you can't support one and not support the other.

I think, to me, a lot of the fellow health providers have really become aware of the essential work that our fellow front-line digital platform workers are performing. I think that the government, if they were to honour workers coming out of this pandemic, or even as we head into another wave, that they really have to support all essential workers and not create a second—

The Chair (Ms. Natalia Kusendova): Thank you so much. We are out of time.

The independent member is not here, so we will proceed to the government. MPP Martin.

Mrs. Robin Martin: Let's just get back to where we left off. I was trying to ask Ms. Ladd about your point about work assignments and how this is defined in the legislation. Can you show me where the definition is in the legislation?

Ms. Deena Ladd: I'm sorry, I don't understand the question.

Mrs. Robin Martin: Sorry, I think I misremembered now. I just remembered, as I thought about it, that you actually said that the work assignments are defined by the platform companies, like Uber, a certain way. But what I wanted to ask you was: Can you show me where this is defined in the legislation? Because you were concerned that they would not be paid for waiting or getting the order or something to that effect.

Ms. Deena Ladd: Yes, it's the way the minimum wage is defined in the bill, and so that is the point, right? There's one aspect in it, where it says, "Minimum wage shall be paid for each work assignment performed by a worker." The platform companies define that, so it means that workers are going to have to individually make complaints—

Mrs. Robin Martin: Can I just stop you there, Ms. Ladd?

Ms. Deena Ladd: Well, I'm just trying to finish my point.

Mrs. Robin Martin: I know. I got your point. The point is that "work assignment" may be defined a certain way by the companies, but the virtue of being in the role of being the government is that you get to define these things in regulation for the purposes of the legislation. So we're not beholden to have any particular definition of "work assignment." That remains to be seen in the regulations and it would be something that would be dealt with in the regulations for which submissions such as you were making would be relevant.

Ms. Deena Ladd: Can I respond to that, MPP?

Mrs. Robin Martin: Sure.

Ms. Deena Ladd: Absolutely, but in other types of jobs, like with retail work and in restaurant work, you're not defining what an assignment is.

The thing is, what's really quite critical here is: Why are you just pulling out the minimum wage? Why not just ensure that workers have—because minimum wage is one thing, but what about 4% vacation pay? What about public holiday pay? What about overtime pay? These are all statutory entitlements that make up your wages. The minimum wage is just one aspect of employment standards, and so by pulling out just the minimum wage, you're basically denying workers other aspects of a wage.

If you look at your pay stub, everyone gets a pay stub—

Mrs. Robin Martin: Thank you for the explanation. It's just going on a bit long and I only have so much time.

Ms. Deena Ladd: Okay, no problem.

Mrs. Robin Martin: I get it; the act doesn't have every possible right a worker could have. The act has some rights, and it clarifies rights that weren't clarified before for those workers, and adds, in our view—it enshrines rights that nobody was giving gig workers before, which they do not have to prove that they're an employee to get. They don't have to do anything. These rights will be enshrined in legislation, and they don't preclude workers from having other rights under any other statute or law. So we think it's a great step forward—

Ms. Deena Ladd: Can I respond to that piece, MPP?

Mrs. Robin Martin: Sure. I'm going to get to a question in a second.

Ms. Deena Ladd: Thank you. I just wanted to say that basically with the workers that I work with, it's really quite critical that you don't put them in a position where they have to fight for every little thing that they get.

Mrs. Robin Martin: Well, that's exactly what we're doing.

Ms. Deena Ladd: If you only pull out minimum wage—if you just designate them as an employee, they would be entitled to everything. We're just talking about basic rights. We're not talking about extra-special things here, just to point that out.

Mrs. Robin Martin: Right. So what we pulled out was minimum wage, the entirety of the tips they earn, the right to certain information about how their pay is calculated, which we heard from gig workers is really important to them, the right to resolve their work-related disputes in Ontario and protection from reprisal should they seek to assert these basic worker rights. These are all important worker rights that are not clearly given to gig workers at this time without them having to prove that they are an employee and go for that whole process. What this legislation does is it enshrines those rights without question, making it easier to at least assert these rights as a gig worker.

Go ahead, if you wanted to, MPP Anand.

Ms. Deena Ladd: And if they were an employee, they would get these—

The Chair (Ms. Natalia Kusendova): I'm sorry, I must give the floor to MPP Anand. Go ahead.

Ms. Deena Ladd: Oh, sorry.

Mr. Deepak Anand: No, no. I just want to say, Deena, the same thing we heard yesterday from the gig worker himself. He said, "One of the challenges which we have is that when we start early in the morning, we look at the premium. If I'm going to go out and take an order, I'm going to get a premium of $5. By the time I pick up the first order and I'm already here, I look at the second order and the premium is gone." So something that they talked about is how the algorithm works. They talked about the certainty in making sure that when they start their work, that they will get paid X dollars for X amount of work should stay. Do you think those things are important?

Ms. Deena Ladd: If they were an employee, all of these things would actually be enshrined in employment standards. The algorithm doesn't just exist for app-based workers. We have truck drivers, we have people paid on commission, you have people who are telemarketers, you have cleaners who are given designated jobs. This is just another evolution of the way in which work is now defined by these platform app-based companies.

Mr. Deepak Anand: Do you think it is important?

Ms. Deena Ladd: All I'm saying is that if you're terming workers as employees, all of these rights would be already there. You don't have to actually say any of this stuff because it's already there. Reprisals, information about jobs, how you're going to get paid: It would all be there.

The Chair (Ms. Natalia Kusendova): One minute. MPP Anand.

Mr. Deepak Anand: Again, where we have an issue is every time I talk to the gig workers—I actually had an opportunity to talk with them over the radio as well, where everybody had given their points as well. One of the challenges, one of the things they want to do is they want to be on multiple platforms at a given time. They believe that rather than waiting at X point—they don't want to get paid X dollars by waiting. They would rather be working and be continuously going from one platform to the other. And to get that flexibility, they want to have this flexibility the way the work is right now. Their biggest concern was that when they start to work, they don't get paid what they had been asked or what they thought. I think that is exactly what this bill is doing. My question is simple: Do you think it's a positive step forward?

Ms. Deena Ladd: No, I absolutely don't.

The Chair (Ms. Natalia Kusendova): And that brings us to the end of our deliberations this morning. Thank you so much to all three of our presenters.

This committee will now recess until 3 p.m. this afternoon to resume our public hearings on Bill 88. Have a wonderful day, everyone. Thank you.

The committee recessed from 0959 to 1500.

The Chair (Ms. Natalia Kusendova): Good afternoon. The Standing Committee on Social Policy will now come to order. Welcome back. We are continuing our public hearings on Bill 88, An Act to enact the Digital Platform Workers' Rights Act, 2022 and to amend various Acts.

As a reminder, each presenter will have seven minutes for their presentation. Following all three presentations, there will be 39 minutes of questioning for all three witnesses, divided into two rounds of seven and a half minutes for the government, two rounds of seven and a half minutes for the opposition and two rounds of four and a half minutes for the independent member.

MR. RICHARD JEMMETT

ONTARIO COLLEGE OF TEACHERS

CANADIAN UNION OF PUBLIC EMPLOYEES

The Chair (Ms. Natalia Kusendova): I'm pleased to welcome our first set of presenters this afternoon. We'll begin with our guest who is appearing in person, Mr. Rick Jemmett, Welcome. You have seven minutes for your presentation, and you may begin by stating your name for the record.

Mr. Richard Jemmett: Richard Jemmett.

The Chair (Ms. Natalia Kusendova): Thank you. You may begin your presentation.

Mr. Richard Jemmett: Thank you. Trying to get the tech here.

The Chair (Ms. Natalia Kusendova): You may begin your presentation.

Mr. Richard Jemmett: Thank you. I'm just trying to work out the technology.

The Chair (Ms. Natalia Kusendova): Oh, sorry.

Mr. Richard Jemmett: I'm the least capable Zoom person on the planet.

The Chair (Ms. Natalia Kusendova): You and I both, so don't worry. Technology can be challenging.

Mr. Richard Jemmett: Look at that. There we go. Okay. Thank you.

Thank you for the invitation to speak with you this afternoon. I'm going to move through this fairly quickly. There's a lot of data to cover, and I'll be happy to deal with questions and conversation afterwards.

There are important weaknesses in Bill 88 relating to driver earnings that will result in severe impacts to earning potential for drivers across Ontario. In my case, I will see a loss of between 22% and 68% of my current earnings if Bill 88 becomes law, and it's likely that similar reductions will be seen across Ontario.

Bill 88 fails to define "work assignment," despite this term being the foundation of the minimum wage for active time model. Using the SkipTheDishes platform, there are three possible definitions of work assignment: time from acceptance of an offer to delivery of the order—I've called that option A; time from the restaurant arrival to delivery of the order, option B; and time from receipt of order to delivery, option C.

During 14 shifts, two different weeks through March of this year, 185 deliveries, I collected data on each of those times segments. Option A, offer acceptance to order delivery, the average time for me was 15.5 minutes. When calculated out at the minimum wage per active time concept that worked out to $4.13 per order; option B, average time was 11.5 minutes to $2.96 per order; option C, 6.9 minutes, $1.66 per order.

Presented as a table, you can look at Bill 88 with option A, option B and option C, and you can see quite clearly there's a difference in pay versus what I'm currently making from SkipTheDishes across those 185 orders. SkipTheDishes pays drivers a minimum amount of money per order, provided they maintain 80% acceptance rate. The minimum amount of money per order in that situation varies between different delivery regions in Ontario. In Orangeville where I drive, it's $7 per order. So my $5.30 per order that I've currently made throughout this past month represents 76% of that $7 minimum. Option A under Bill 88 would provide me with 59% of that $7 minimum; option B, 42%; and option C, only 24%.

We can also look at earnings per hour within it without tips. Without tips, I'm currently making $11.86 per hour option A drops that to $9.14; option C takes it down to $3.61. With tips, I'm currently making $20.94 an hour; option A reduces that to $18.22 and option C reduces that $12.69.

The data shows that it's impossible for me to maintain my earned income under the new Bill 88 model. I don't see any way that that can happen.

The question then becomes, what is the impact of Bill 88 on SkipTheDishes earnings across Ontario, not just in Orangeville? Using data from my deliveries it's possible to build out a projection of the impacts of Bill 88. If we apply the same percentage of the SkipTheDishes minimum to different regions, then we can look at how that might play out, using the minimum per order model for different delivery regions in Ontario.

Here we see Barrie: Their SkipTheDishes minimum per order, at an 80% acceptance rate, is $5.50. Currently, 76% of that would be $4.18. However, option A under Bill 88 would reduce that to $3.25. You can see the general pattern throughout that table.

In Etobicoke, the SkipTheDishes minimum is $7.50; $5.70 represents 59% of that. Option A reduces that to $4.43 per order and option C reduces that to $1.80 per order.

If we look at a comparison of that projected data that I've just shared with you versus actual data from Etobicoke, we can see a certain amount of correspondence between the projected data and the actual data. A colleague of mine who drives in Etobicoke collected data over this past weekend. The projected option A money for Etobicoke was $4.43 at 59%—that was my projection. His actual percentage of the $7.50 minimum was 55%, at $4.13. That goes all the way down to my projected percentage of 24%, giving $1.80 per order. His actual data returned 27% at $2 per order.

There is a good degree of fit between the projected and actual data for options A, B and C. We have 59% versus 55%, 42% versus 37%, and 24% versus 27%. This supports the hypothesis that Bill 88 will result in reduced earnings for SkipTheDishes drivers across Ontario. Under no potential definition of "work assignment" is there any possibility for me to maintain my current earnings. It's likely that the same conditions exist for SkipTheDishes drivers across Ontario.

The Chair (Ms. Natalia Kusendova): I would now like to invite representatives from the Ontario College of Teachers. We have Chantal Bélisle, interim registrar and chief executive officer, as well as Nancy Tran, membership analyst. Welcome. You have seven minutes. Please begin by stating your name for the record.

Ms. Chantal Bélisle: Bonjour. My name is Chantal Bélisle and I'm the interim registrar and CEO of the Ontario College of Teachers. Joining me today is Nancy Tran, membership analyst. We're here today to share concerns regarding the proposed amendments to the Fair Access to Regulated Professions and Compulsory Trades Act, which is under schedule 3 of Bill 88, which would establish tight and unyielding timelines in which regulators must respond to domestic labour mobility applicants for certification in Ontario.

Fort de ses plus de 230 000 membres, l'Ordre des enseignantes et des enseignants de l'Ontario reçoit un grand nombre de demandes d'inscription, du pays et de l'étranger.

While the college supports expedience in licensing Canadian-certified professionals moving to Ontario for work, we must also ensure that our process in certifying teachers remain fair and equitable for all applicants; does

not negatively impact employment opportunities for labour mobility applicants from other Canadian jurisdictions; provides flexibility for the college to handle emergency situations; is consistent and implemented smoothly; and, most importantly, continues to protect one of Ontario's most vulnerable populations, the more than two million students attending elementary and secondary schools in the province.

I'll invite Nancy Tran to speak to the next part, if we can enable her mike.

Ms. Nancy Tran: Prescribing strict timelines for labour mobility applicants moves other applicants to the back of the line. The college processes applications in the order in which they are received. This ensures fair and equitable timelines for all applicants, regardless of where they come from.

The proposed amendments are meant to ensure that applications from Canadian-certified teachers would be acknowledged within 10 days, evaluated within 30 days and, where necessary, receive an appeal decision within 10 days. If enacted, the new time frames would create a two-tiered system, with Canadian-certified teachers ahead of all other applicants, including internationally educated teachers and graduates from teacher education programs in Ontario. This would likely be met with negative reactions from the international and Ontario applicant groups, and the public. Further, the changes do not support the Ontario Fairness Commissioner's core principles of fairness, impartiality, transparency and objectivity.

1510

Strict timelines exaggerate the existing teacher shortage, especially in the areas already facing critical deficiencies. The college has already implemented a temporary certificate program to lessen the existing teacher shortage. Additionally, in the last several years, the college has been working to alleviate teacher shortages in critical areas such as French, technological education and Indigenous languages.

The proposed timelines would have the unintended effect of exacerbating the teacher shortage and shortages in key subject areas, as college resources will be diverted to comply with strict timelines for Canadian-certified applicants instead of ensuring that all applicants become certified, including French, technological education teachers and Indigenous language teachers.

Incomplete information on the public register puts the public at risk and could make it harder for labour mobility applicants to find teaching jobs. In Ontario, the teaching qualifications of every Ontario-certified teacher are listed on both their certification document and the college's public register. This includes specific student grade range and the subjects they are qualified to teach.

Teachers are trained in specific subject areas such as French, high school math and even machinery. Having these qualifications is proof that these educators are competent and qualified to safely and effectively teach these subjects. Ontario school boards are required to use this information when hiring teachers and assigning them to roles that fit both their training and qualifications, which helps ensure that Ontario students receive the best education possible. No other Canadian jurisdiction lists this level of details on their certification documents and on their public register.

The process of assigning the specific qualification is completely dependent on the originating jurisdiction, and response times can vary greatly, depending on how long ago the program was completed. Domestic labour mobility applicants would be negatively impacted if they are certified in Ontario without first confirming their teaching qualifications, as employers may not be able to assign them a suitable teaching position, or any position at all.

I'll pass the mike back to Chantal, if that's okay. Thank you very much.

Ms. Chantal Bélisle: A one-size-fits-all approach to timing will not work for all regulators. The proposed timelines do not account for the unique circumstances of each regulator. For example, the Ontario College of Teachers conducts all aspects of evaluations, from A to Z, based on a thorough review of each applicant's qualifications. While other regulators may rely on third-party credential assessment services or their national body to conduct many aspects of the evaluation, we evaluate all aspects of the application in-house, which requires additional time and expertise. Stringent timelines may interfere with proper vetting, putting a vulnerable student population at risk. The proposed 30-day limit to render certification decisions will only run smoothly if applications require little to no follow-up or additional information. However, in many instances, the college needs additional time to obtain vital information not provided by the applicant. Unfortunately, a certification decision within 30 days becomes an unrealistic target.

In cases where an applicant's professional suitability for certification comes into question, the college requires additional time to make the appropriate inquiries. For example, if a labour mobility applicant has a criminal history or has faced disciplinary action in another jurisdiction, we'll have to verify specific details with different stakeholders: the originating regulator or teaching authority, police, courts, employers, the applicants themselves. This is one way the college protects the public interest as it ensures that only those who are of good character can teach in Ontario. Unfortunately, the college has no control over applicant response times or third-party processing timelines.

In conclusion, the college understands and supports the need to expedite the certification process for Canadian-certified professionals moving to Ontario. However, we also wish to stress the importance of ensuring that changes to certification for all professionals are fair and do not have negative and unintended consequences for applicants, employers and students.

The Chair (Ms. Natalia Kusendova): One minute left.

Ms. Chantal Bélisle: We look forward to working closely with the government to discuss alternatives to proposed amendments, as included in our more fulsome written submissions, in which we've included recommendations.

Merci and thank you for the opportunity to share our thoughts.

The Chair (Ms. Natalia Kusendova): Merci beaucoup. I would now like to invite Fred Hahn, the president of the Canadian Union of Public Employees. Welcome. You have seven minutes, and you may begin by stating your name for the record.

Mr. Fred Hahn: Perfect. Good afternoon. My name is Fred Hahn, and I'm proud to be the president of the Canadian Union of Public Employees Ontario, representing over a quarter of a million workers in the province across the entire broader public sector.

Not that long ago, I came to speak to a legislative committee about another Working for Workers Act, when you were last debating labour reforms. At that time, I argued for changes to the last Working for Workers Act, but I also pointed out the very real problem of putting forward legislation like this with absolutely no consultation with the groups that actually represent workers—unions like ours, for example—because that process results in bills that ultimately make no sense for workers.

Today, discussing Bill 88, we see another version of the bill claiming to work for workers, for the rights of gig workers, for example. But this bill appears only to be crafted by government trying to salvage its image, with no clue of what gig workers actually need and no willingness to listen to those workers when they speak up.

Let me begin by saying what I have said many times before: In order to work for workers, that can't begin in earnest or in any real or substantive way without the repeal of Bill 124, this government's grotesque and unconstitutional assault on workers' livelihoods. It was never right to restrict workers' compensation to 1%. But with soaring inflation and an increasing staffing crisis throughout the broader public sector, it's more urgent than ever to repeal Bill 124.

Alongside that important reality is the truth that there is actually no need for a new act to cover gig workers. Gig workers are workers. They're employees. They deserve all the same rights as other employees in Ontario, and there's an easy way to give them access to those rights: Affirm their status as employees under the provisions of the Employment Standards Act.

It's also important to note that gig workers are overwhelmingly a racialized group. It begs the question: Would we even be here having this discussion about whether or not they're employees like all others—a reality so plain to so many it seems amazing it's in dispute—if this were a predominantly white workforce?

The Ontario Labour Relations Board seems to agree that gig workers are employees. Recent legal decisions have been siding consistently with gig workers, as in the labour board's ruling just last month, when Uber bike courier Saurabh Sharma complained that Uber had not paid him in accordance with the ESA. Not only did the labour board rule that Mr. Sharma was an employee within the definition of the ESA, but they also found that Uber had violated 12 separate provisions of the Employment Standards Act in Mr. Sharma's case.

Gig workers have always been employees. It's just that their employers didn't want to admit it. Now that employers are being forced to face this reality, the government is stepping in—but not on the side of workers; on the side of huge corporations like Uber. Bill 88 creates a two-tier system of employment rights in the province, with gig workers entitled to only an extremely limited set of rights that pale in comparison to those in the ESA. The bill doesn't even achieve the basics of fairness to pay gig workers for their entire shifts, for all of the time they work. Instead, the minimum wage is proposed—that it wouldn't apply to transit time, which is a huge chunk of these workers' required workday.

You voted down a bill that actually got this issue right: Bill 28, the Preventing Worker Misclassification Act. What would be best is for you to reconsider Bill 28, because it actually gets at the problems being faced by gig workers. But alternatively, you could also remove schedule 1 from Bill 88 and affirm that gig workers are employees under the Employment Standards Act. This would achieve what gig workers themselves have been asking for, for some time.

Regarding schedule 2 of the bill, the Digital Platform Workers' Rights Act, as it relates to employees' rights regarding digital surveillance in the workplace, the lack of substance here is staggering. Of course employees should have the right to know when and to what extent their managers are monitoring them online while they're at work—

The Chair (Ms. Natalia Kusendova): Thank you. We are out of time.

We will now begin our rounds of questioning. We do have MPP Fraser with us. Good afternoon. You may begin our first rotation.

Mr. John Fraser: Thank you to all the presenters for taking the time to present to us today. I don't have a lot of time, so I'll try to keep my comments short, which I haven't done well in this committee so far.

Mr. Jemmett, you offered a very detailed analysis of hours of work—"engaged time," I think, is the term that's being used—and how open that is in this current legislation to put persons like yourself already in precarious employment in a more precarious position because of not knowing what "engaged time" actually means or how it's measured. Can you recommend what you think should be in this bill to make sure that you get a fair wage?

1520

Mr. Richard Jemmett: Leave it alone. It's fine as it is. Literally, I don't see the pointing in creating some odd category for gig drivers and coming up with some very odd minimum wage for active time. I've seen it discussed where, "What happens if we try to apply that to other occupations?" Suddenly, the person working a retail job is only paid for the active moments they're serving a customer—

Mr. John Fraser: Really? I come from the grocery business. I did this for 22 years. I never said to a cashier, "Well, there's not someone at your cash. I'm not paying you." I never said that, and I never said to somebody who

was serving people, "Just because you're not serving that table, I'm not going to pay you."

The point and the whole idea of trying to bring actual workers' rights to gig workers is that there are a number of people who won't be protected. It's not always clear and transparent how their wages are calculated. All the power is with the employer. They don't have health and safety benefits. They don't get other benefits, like actually knowing why they're dismissed. There are no rights to organize. So what that does is it puts a lot of workers at risk. It's precarious employment.

I understand what you're saying. You like things as they are. The challenge then becomes, what about all those other people—the majority of them—who don't like where things are at, and want some change and want some protections?

What I think about this bill—and this is the thing I think we'll agree on—is that they threw this together really quickly, without consulting with individuals like yourself or labour or the half a dozen people who we saw come in yesterday. I'm glad that we can agree on this point. I think the government has got it wrong and that it should actually be taking the time to get it right. Don't create a second class of workers, because that's what is happening.

There are young people out there who depend on these jobs to try to exist. The whole point of employment standards is to create some sort of equilibrium or balance between the employer and the employee. The Working for Workers Act doesn't do that.

I'm glad that you're here today, because I think it's important that viewpoints like yours—is that it?

The Chair (Ms. Natalia Kusendova): One minute.

Mr. John Fraser: Thank you—are clearly understood by all of us. I don't think that we around this table fully understand where gig workers are at or what they need. I think we need to take more time to get this bill right so we don't create a situation where we create a piece of legislation where it doesn't actually work for workers.

We're in a hurry here because June 2 is a ticking clock. To my colleagues across the way, I'd be happier if you took this back and everybody made a commitment to work on it after the election. I think you're doing the wrong thing. It's not going to help workers.

I know we don't agree on the one point, but I do appreciate your being here to actually express, "Nobody asked me about this." So thank you for taking the time and for your very detailed analysis. It's very much appreciated. Thank you, sir.

Mr. Richard Jemmett: May I respond?

The Chair (Ms. Natalia Kusendova): We are unfortunately out of time, but in the next round, you may.

I'll move on to the government. MPP Sabawy.

Mr. Sheref Sabawy: I followed your presentation very, very closely. This is very interesting, because my background is in technology, and I really see the model of SkipTheDishes or Uber or all these types of new kinds of models of businesses as very interesting.

I would like, of course, to note that the government is moving on to try to regulate something that is totally new, is growing. It's just the first step towards having some framework of some sort.

My question is in regard to your presentation. We've seen some averages of the number of calls or how you calculate the call, the number of orders per hour. That's assuming that they have some specific number of orders. Maybe SkipTheDishes now—it's the example you used; I don't want to name any names, but just the example you used—is already established and they have a stream of calls. When these calls are not going to be within that number, like only getting two calls per day or three calls per day, I think here the legislation will kick in and protect some of the rights for the people who are tied to the business in a way but have very, very low call numbers.

I understand the calculations here very well, but it's assuming that he will get, let's say, four hours or six hours of business going on. With a low number of calls, this number is going to be much different. You can work for four hours for, like, a dollar something per hour because the number he is getting is so low.

How do you see the effect of the slow number of calls or slow business basically or a new start-up company on this presentation you gave us earlier?

Mr. Richard Jemmett: I will only speak to the SkipTheDishes model because it's the only one I have any experience with. I'm a retired health care professional. I worked probably 80% of my career as a self-employed practitioner. I found the SkipTheDishes model attractive because it was self-employed work. The flexibility that it provides me is enormously important to me personally.

As for my presentation, I spoke only to the financial aspects. In my paper documents you'll find comments with respect to some of the positive aspects of the legislation with respect to transparency, the improved communication with workers—those are all very good. But the minimum wage for active time model is going to be disastrous. It's a ridiculous model. It will push me out of the work. There's no point in working for 50% or worse of what I'm currently earning.

The Chair (Ms. Natalia Kusendova): MPP Anand.

Mr. Deepak Anand: First of all, Rick, thank you so much for coming. Again, we want to hear from people like you who are actually into the work, as it's going to impact you the most.

Quickly, if you go back to the presentation, if you still have that on, I just quickly want to ask the question: Is there a model in the existing, without doing anything, that shows the amount of money you're making now?

Mr. Richard Jemmett: Sorry, could you refer to the paper document? Because I can't pull the screen up for you to see at the moment—

Mr. Deepak Anand: Okay. It's tough for me to see the Word document because there's so much data here. But again, quickly, I just wanted to ask you—you can see it yourself; you don't have to show it here. A very simple question is: Without the bill, does it show how much money you're making?

Mr. Richard Jemmett: Yes, it does. The table that I've got up right now under "Existing," that's what I'm

currently making now per order before tips. Option A, which is the work assignment model where it is measured from the time I swipe to accept an offer to the time I swipe to note that the order is delivered, that's the maximum time possible. The money that I'll make with that model when I take that amount of time—15.5 minutes is the average; multiply that by the $15 per hour minimum wage concept and I end up with $4.13 per order. So I'm losing over $1 per order under the best-case scenario.

Mr. Deepak Anand: No, no, no. Let me try and understand. In the existing model, when the bill is not on the table, how many dollars per hour are you making?

Mr. Richard Jemmett: It varies. Later on, I have—right there.

Mr. Deepak Anand: Okay.

Mr. Richard Jemmett: Without tips—

Mr. Deepak Anand: Without tips.

Mr. Richard Jemmett: —I'm making $11.86; with tips, I'm making $20.94.

Mr. Deepak Anand: Well, tips are not the question.

Mr. Richard Jemmett: With the bill, it'll drop to $9.14 from $11.86.

Mr. Deepak Anand: Perfect. So this is what I wanted to talk about. But I just noticed something, and I just want to say for the future, whenever you're coming here, I see at the bottom "liberal democracy."

Mr. Richard Jemmett: Yes.

Mr. Deepak Anand: Because we, as a Legislature, are non-partisan, we try to stay away from those kinds of whatever, beliefs—the system that you have in the presentation.

1530

Mr. Richard Jemmett: Liberal democracy refers to the entire concept of our political system; it's not a party.

Mr. Deepak Anand: I'm not talking about the Liberal Party, no.

Mr. Richard Jemmett: It has nothing to do with the Liberal Party or anything else.

Mr. Deepak Anand: So just a suggestion—

Mr. Richard Jemmett: Do you have a concern about liberal democracy, then?

Mr. Deepak Anand: No, I don't have any concern about anything. It's just that I'm talking about any value system or political system we talk about is we usually don't show—that's all I'm saying.

Mr. Richard Jemmett: Oh.

Mr. Deepak Anand: Yes.

Going back to that suggestion: So what you're saying is you're actually making $11.86 per hour.

Mr. Richard Jemmett: Before tips, yes.

Mr. Deepak Anand: Okay. Perfect. How much time duration? Is it like a one-off or do you think it is an average of six months or a year?

Mr. Richard Jemmett: That's the average per hour before tips over 185 deliveries made over two specific weeks this month.

The Chair (Ms. Natalia Kusendova): One minute left.

Mr. Deepak Anand: Perfect. I think this is exactly—the first thing this bill is doing—we want to understand how much you're making. Not only you; we want everyone to understand how much you're making per hour. And we want to make sure that if that number, as you say, is less than the minimum wage, which is $15—we want to fight with you to make sure it becomes $15. This is the first thing we are doing in this bill.

Mr. Richard Jemmett: How does the bill do that for me when I'm showing you that I'm going to make less—

Mr. Deepak Anand: That's where we're going to take it back. The example that you've given, we're going to go and take it back and we're going to say to these platform companies, "As per this, prove it to us. Prove it to Mr. Rick as well."

First of all, there should be transparency, and you agreed that you actually support the transparency. Thank you for that. But what we want to go beyond—

The Chair (Ms. Natalia Kusendova): That concludes the time we have for this round.

We will bring it over to the official opposition. MPP Sattler.

Ms. Peggy Sattler: Thank you to all of the presenters who are here today. In particular, I want to thank the Ontario College of Teachers because you brought to this committee a concern that we haven't heard before today.

However, I do want to focus my questions on the presentation from Mr. Hahn of the Canadian Union of Public Employees, who addressed specifically schedule 1. That certainly is the schedule of this bill that has caused the greatest concern and has generated the greatest opposition from the people who have presented to this committee over yesterday and this morning.

Fred, you talked about the legal decisions that have already established that platform workers are employees. You referred to the Ministry of Labour's recent decision for Mr. Saurabh Sharma, an Uber Eats delivery food courier, and the decision there that he was actually an employee of Uber Eats, and that Uber Eats had been violating a number of provisions of the Employment Standards Act. Are you concerned that if the government creates a separate piece of legislation called the Digital Platform Workers' Rights Act that suggests that somehow digital platform workers are legally distinct from other workers and don't have the same rights as other workers, don't have the same protections as other workers under the Employment Standards Act—that this legislation, once it's in place, would undermine the ability of workers like Mr. Sharma to take a claim forward to show that their rights have been violated?

Mr. Fred Hahn: We're incredibly concerned about that. In fact, what this legislation does is prevent workers like Mr. Sharma and others from continuing to come forward to verify what the labour board has already found: that they ought to be covered by the Employment Standards Act.

By intervening in this question, by creating a new category of worker, what the government is doing is setting up this two-tiered system where, as we heard from another presenter, their incomes will be impacted, but also their ability to access the rights of other workers in the

province will be impacted. It is the wrong direction. It is not what gig workers themselves have been asking for. It is not what the Ontario Labour Relations Board has already found. And it will have a negative impact in the future except, of course, for the bottom line of those large corporations like Uber Eats and SkipTheDishes, who, I'm sure, are going to be very happy with this outcome.

Ms. Peggy Sattler: Are you also concerned that this may set a precedent that other employers may want to try to pursue to get their workers taken out of the Employment Standards Act and this legal category is created for them where they have lesser rights and, therefore, it relieves employers of obligations under the Employment Standards Act? Do you share that concern that was raised with us, with this committee, that this is a slippery slope and it leads to the "gigification" of other sectors of our economy?

Mr. Fred Hahn: In fact, the pandemic has seen that, in many ways, there are parts of our jobs and parts of all kinds of jobs in the future that may in fact have more of a gig component to them. It is a grave concern because there used to be a simple kind of definition: either you were an employee or you were self-employed.

By creating this third category, it is a slippery slope that can create the opportunity for some employers to try to argue that the people that have been employees for them no longer should be employees in the future. It is an unnecessary complication to an already complicated employment landscape when all we need to do is simply say that these folks have been misclassified. The kind of flexibility that we heard from another presenter can completely be accommodated while people are considered employees under the Employment Standards Act. That's really what should happen for these workers.

Ms. Peggy Sattler: I appreciated your reference to Bill 28, my private member's bill on preventing worker misclassification. I invite you to elaborate a little bit more as to why you think that would have been the right direction for the government to take if they were really serious about working for workers and really committed to protecting workers in Ontario.

Mr. Fred Hahn: I'm proud to represent workers in the broader public sector. I confess that the issue of gig workers isn't intimately connected to much of the work that our members do, but what I've done over the last number of years is listen to gig workers themselves and be part of work that happened through changes to labour law from a few years ago. There was a huge process and a real mechanism under way where we could hear directly from folks who do this work about what they needed and about what would be the best to accomplish their rights in the workplace.

That's why I referenced the private member's bill that you introduced, because the real issue, the heart of the matter, when it comes down to it, that we hear from gig workers, from their advocates, from workers' advocacy centres is, in fact, that these workers are inappropriately misclassified in the law and that they should simply be considered employees and, therefore, have access to rights like all other workers in the province.

Ms. Peggy Sattler: And the final question I want to ask is with regard to your comment about the reality that gig workers are mostly a racialized workforce, and we heard this morning from another presentation that this legislation effectively entrenches systemic racism by providing these lesser rights to a largely racialized workforce. Can you comment a little bit more about your concerns about that?

Mr. Fred Hahn: I think we've all witnessed, over the last couple of years, the ways in which we have workforces, for example, in long-term care, where the majority of those workers are women; where, often, those workers, particularly in large urban centres, are racialized workers; where the rights of the workers—even though they are in a system and part of the broader public sector, they have questionable access to those rights.

The Chair (Ms. Natalia Kusendova): That concludes the time we have. Thank you.

Mr. Fred Hahn: We see the way in which we know that there's still a wage disparity between what women make and what men make—

The Chair (Ms. Natalia Kusendova): I have to cut you off. So sorry.

Now we are going back to MPP Fraser for his four and a half minutes.

Mr. John Fraser: Mr. Jemmett, I do very much appreciate your being here today. You got cut off at the end. I don't have very much time, but I didn't give you a chance to respond after my last round, so if there's anything that you wanted to say—

Mr. Richard Jemmett: Thank you.

Mr. John Fraser: But keep it short, because I only have four and a half minutes and I want to get to somebody else. That would be great.

1540

Mr. Richard Jemmett: I strictly just wanted to make the point that when I started working with SkipTheDishes in January 2020, a key reason for taking that opportunity was the self-employed model that provided me with an enormous amount of flexibility. In retirement, my wife and I now run a small farm just outside Orangeville; different times of the year there's not really much opportunity for me to be doing work off-farm, but there's a good chunk of time, of course, where there's plenty of time to do work off-farm and this supports our transition to a larger operation.

I'm concerned about the emphasis, I guess, that I'm hearing about transitioning what I thought was a self-employed model to an employment model. I really don't have any experience with any employment situation where I could expect to see this same kind of flexibility in my job that I have currently.

Mr. John Fraser: That's the thing we're trying to balance, right? Then there's a whole other group of people for whom it's employment and flexibility is not the thing they're looking for; they're looking for income. So there's some rules we have to make for them that may not apply directly to you. That was kind of my point.

Mr. Richard Jemmett: Okay.

Mr. John Fraser: But I think we need to hear your point of view because it's talking about: How does the balance work? I think right now what I'm concerned about is people who are not protected in the ways that almost every other employee, or many employees in Ontario—we heard 25% the other day—all those standards that exist that protect people, like health and safety protections. It's hard to believe that the government didn't put anything in this bill with regard to that. They were talking about giving workers rights, but no requirement on behalf of the employer, nothing to WSIB.

Anyway, I appreciate it, but I do want to get to the College of Teachers. Sorry, Mr. Hahn, I won't have a chance to get to you; I only a four and a half minutes and I can't talk that fast.

I'm concerned in terms of mobility and people getting access to the thing they've been trained in in a timely fashion. I understand the concerns that you're expressing, but there is a great deal of pressure and need to make sure that people who have spent their life or a good portion of their life being trained have the ability, in a timely fashion, to be able to practise the thing, whether it's teaching, whether it's a trade or a profession. Somehow that pressure has to be created to shrink down that time, because it hasn't worked. I've been watching for 15, 20 years, not just for teachers but in other professions. So what's the remedy in this bill?

Ms. Chantal Bélisle: Thank you for the question. We appreciate the opportunity to provide some additional information that's contained in our more fulsome written submission, and we do provide recommendations in that regard. We understand the concerns and we share the concerns.

All we want to prevent is unintended consequences. Prescriptive dates might be better suited by expectations, best efforts and guidance in that regard, and mandated timelines might create the opposite of what we're aspiring to achieve.

You have Ontario graduates as well that might be negatively impacted, and it is creating a two-tiered system as opposed to treating applicants fairly. We wanted to bring what we believe might be unintended consequences and ensuring that there is that lens to recalibrate some of the requirements in terms of mandated timelines and maybe incorporating a little more flexibility. As well, ensuring that there's a transition period for professional regulators to implement this: It won't be of any success initially if there's no time to implement the operational resources required to have this move forward.

Mr. John Fraser: That's great. Thank you very much, Chair.

The Chair (Ms. Natalia Kusendova): Thank you. We have five seconds.

Mr. John Fraser: I just want to thank all the presenters for coming here and apologize for actually forgetting to put my phone on silent, which I never do.

The Chair (Ms. Natalia Kusendova): Thank you kindly.

Now to the government side. MPP Sabawy.

Mr. Sheref Sabawy: My question is for the College of Teachers. Have you heard about the Agreement on Internal Trade which was signed by the majority of the colleges and licensing authorities in Ontario with other provinces of Canada? Can you confirm that the college signed that or not?

Ms. Chantal Bélisle: I'll invite Nancy to respond to that question.

Ms. Nancy Tran: Are you talking about the Canadian free-trade agreement?

Mr. Sheref Sabawy: The Agreement on Internal Trade, AIT. That was introduced about eight years ago by the Liberal government, and my understanding is, the majority of the authorities in Ontario signed that.

Ms. Nancy Tran: That's correct, yes.

Mr. Sheref Sabawy: Chantal was saying we need the time for regulatory bodies to modify their procedures and fine-tune with an agreement that has been there for about eight years. How long do you think is needed for the policies to reflect that? That's my first question.

My second question is in regard to open files. People who applied and are waiting to hear if they're going to get a licence or not, do you have any statistics about how many applications are open more than a year with the college?

Ms. Chantal Bélisle: I'll invite Nancy.

Ms. Nancy Tran: Thank you. Unfortunately, I don't have that statistic. It's hard for us to give you just a number of how many applications we have open for a year, because somebody may start an application for a year, but we can't actually start the evaluation process until we've received all of the documents that are required in our regulations. It's only until we've received all of the required documents that we can actually begin the evaluation process. In some cases, there are some applicants who will have an application open more than a year, and usually our time window—we close it after two years if they don't provide us all of the documents.

Mr. Sheref Sabawy: Do you have any statistics about if everything has been completed, they delivered all the requested information and the file is still open? Do you have any statistics or a round figure about how many days or how many weeks it takes to evaluate?

Ms. Nancy Tran: It, again, depends on a case-by-case basis, because an international applicant may take longer than, let's say, an Ontario applicant, or we might encounter cases where we need to go back and get more information. What we can tell you is that, consistently over the years, we're seeing the same number of applications and we're certifying the same number of applicants. In terms of just last year, for example, our numbers actually increased for labour mobility applicants. We actually certified almost 500 labour mobility teachers, which is a lot more than we certified back in the previous years.

Mr. Sheref Sabawy: Out of how many—500 out of how many applications?

Ms. Nancy Tran: Again, I apologize. I don't have the number of applications, because some individuals open applications and they abandon the application. It's not an adequate measure of our statistics just to look at open

applications. You can't tell what the status of each applicant is because, really, it's based on them providing the documents to us. But every year—

The Chair (Ms. Natalia Kusendova): Thank you so much. I believe MPP Anand has a question as well.

Mr. Deepak Anand: Thank you, MPP Sabawy, for leading that question.

I just want to say to the Ontario College of Teachers, first of all, thank you for doing an incredible job. We just want to say that the reason we're trying to make this change, we're trying to bring this policy is we firmly believe that—I was born in India. I am a foreign-trained professional. When I came here, one of the biggest challenges was that I had a six-month-old son. Should I go get my education and get into my job which I was trained in, or bring in the food so that I can take care of my family? One of the challenges we found was that it takes a lot of time to get the professional degree back into the same profession we came from.

All we're trying to do is find out—we're not specifically picking on any college or profession or trade. We're trying to fine-tune it to the extent that—let's work together. We know, yes, there was a time when over 300,000 jobs left the province, but now we are in a different situation. We have 330,000 jobs that are unfilled. What we're trying to do is—we know there are jobs, we know there are people.

I'll tell you, in Mississauga–Malton, 11% of my riding every year comes new: 61% of the people are born out of Ontario, out of Canada. Those people have the skills. We're just trying to help them, give them a hand so that they get trained, they get certified and they can go back and work. We're not picking and choosing people. All we're trying to say is that—when MPP Sabawy was asking what is the average time, we're just trying to understand. Are we going from six months to four weeks? That's a lot of pressure on you, but if it is going from six weeks to four weeks, maybe we are putting you under a little bit of pressure. But that's what we are here for: community service. This is the community service we can give that is maybe adding a little more resources and doing stuff so that more people can get into the profession and give back more to the community as quickly as possible.

1550

I just wanted to say that. Is there anything you want to add to it, to the intentions?

Ms. Chantal Bélisle: Thank you for the comment. I think we have a shared interest, and we just wanted to share that the process is more complex than probably initially thought on the certification. Our role is really public protection and due diligence in verification and validation. We want to treat all of our applicants fairly, internationally educated and Canadian-jurisdiction trained as well as Ontario graduates. We certainly strive to work with the government in that regard and wish to provide some feedback in terms of ensuring that the legislative proposal allows us and enables us to do that effectively.

Mr. Deepak Anand: I appreciate it. Thank you so much.

I know I have very little time so I just want to move over to Rick. I just want to say thank you for that data that you provided. Again, going back to the intention, the intention in this case is we want to understand, we want to know, hourly, how much money you're making, and we want to make sure—this is something which I heard many times. I'll tell you, I was actually on a radio program. I was there for about 30 minutes and people called in. One of the biggest challenges they said was exactly what you said: "We don't make minimum wage." This bill—the first intention is to make sure that you actually make more than minimum wage.

The Chair (Ms. Natalia Kusendova): Your time is done. Sorry.

Mr. Deepak Anand: Thank you, Madam Chair.

The Chair (Ms. Natalia Kusendova): Thank you.

We will now move on to the opposition.

Mr. Wayne Gates: Most of my time will go with CUPE, because I noticed that the Conservatives didn't ask the union any questions. I apologize for that, Fred. But you did raise something about there's 78% workers of colour and 56% immigrants that are in this industry who are being unfairly misclassified by this bill. There is a rumour out there, and maybe, Freddy, when I get to the questions, you can answer it for me. I'm hearing that a lot of the bill was written by DoorDash. I don't know that that's accurate or not, but I thought I'd raise that issue.

My colleague across the road just talked about how we lost 300,000 jobs in Ontario. He's absolutely right. And the reason we lost the jobs is because of the Conservative Harper government that allowed a petrodollar to go to $1.10, when we know, and anybody who's in manufacturing, quite frankly, or in the steel industry knows, that to be competitive in this country we have to have $1 somewhere between 78 cents and 84 cents. That's why the 300,000. It was the Conservative Harper government that thought it was more important to make sure the West was taken care of than the province of Ontario. A little off the bill, but I thought I'd answer his question for him, just to help him out—the type of guy I am.

I also would like to say, Fred, the question for CUPE is: We know that there are roughly 800,000 gig workers in Ontario. Why would this government decide to create a second-class tier for them, and what do you think the reason would be for that?

Mr. Fred Hahn: It seems to us that the problem with this piece of legislation, as I mentioned with the previous piece of legislation called Working for Workers, is that, in fact, the government didn't consult organizations that represent workers or workers themselves. Instead, they consulted their employers, and of course employers will have their interests and will want to make sure that things work out for them and their bottom line.

But when that happens to the exclusion of balance, to trying to figure out a mechanism that will actually bring fairness for the people doing the job, then we see aberrations like this where, rather than looking at a standard existing system that the government's own Ministry of Labour is already saying covers these workers—as an

example, the Employment Standards Act—that the government would think about twisting itself into a new position, creating some kind of third category, all to appease employers.

Honestly, the financial impacts of that are going to be clear. There's hard data that was presented by another presenter. That is the reality that will happen as a result of these kinds of changes in this bill, and it's why that schedule should be removed, why there should be real consultation and why those kinds of unintended impacts, if in fact they're unintended—the government should hear those concerns and deal with them appropriately by actually consulting with workers and doing something that will help them, rather than what this bill proposes.

Mr. Wayne Gates: I appreciate that response. Do you believe that a worker is a worker and that workers in the province of Ontario should be covered by the Employment Standards Act? And also, maybe you can talk to the fact that—well, why don't we leave it there, and I'll get back to you. But do you think that any worker in the province of Ontario, under this bill, who potentially could be making $7.50 in the province of Ontario, when we live in one of the richest provinces in the country and we live in one of the richest countries in the world—do you think that's fair to any worker? I appreciate you responding. Thank you—and I'll leave this question to Fred as well. I'm not scared to talk to the unions.

Mr. Fred Hahn: Of course all workers should be treated the same. Workers should be covered by the Employment Standards Act. In fact, this isn't just my opinion; the Ontario Labour Relations Board agrees. It has found time and again in favour with these workers. The only reason they wouldn't is because the government has turned and twisted itself into a situation to create a new category of employment. It's not right. It's not fair. It's not needed. It's simply unnecessary.

Mr. Wayne Gates: I will say to the College of Teachers that my wife is a teacher. She was a teacher and a principal. My daughter is a teacher in the Catholic school board, and my other daughter works with special-needs kids in the Catholic school board as well. I know how important your role is; it's just that I want to get some of these questions out to Mr. Hahn, because he wasn't asked some questions that I think were important to get out.

The question to CUPE as well: Could you speak to the precedent that this piece of legislation sets? And do you believe that it could open the door for the province to shove more workers into a separate classification? You talked about the third set; could there be a fourth? Could there be a fifth? Where are they going on this? It's really, really scary.

Mr. Fred Hahn: It is a danger, and it is why it is such a concern. Our members work in communities. They care about their communities and their neighbours, and many of their neighbours are gig workers, but this isn't just—at this point, this talks about creating a new category for gig workers, but the danger is that it opens a door in which then other employers and others will argue that there are different categories of workers for different purposes, when in fact, as you stated quite eloquently and simply earlier, a worker is a worker and they should all have access to the same rights.

Mr. Wayne Gates: I appreciate that. Here's one that you can hopefully answer as well, Fred. Actually, the College of Teachers could answer this as well. The CEO of DoorDash, Tony Xu, has a net worth of nearly $3 billion. He's 37 years old. Do you think he can afford to ensure his employees are paid and have all the rights under the Employment Standards Act?

I think the way I've always felt, before I was in the trade union, is that when those who have a lot—the reason why we had the two greatest countries in the world in Canada and the United States was that we shared that enormous wealth. So here's an individual that has $3 billion. I remember when I was a kid—I'm showing my age—there used to be that song out, If I Had $1000000. Now we talk in billions.

The Chair (Ms. Natalia Kusendova): One minute.

Mr. Wayne Gates: But this is an employer who is worth $3 billion. Do you think it would be fair and reasonable to pay workers fairly under the Employment Standards Act? Maybe I'll let the College of Teachers go, and then Freddy.

Ms. Chantal Bélisle: I'm not clear how I can respond in terms of remuneration of teachers with our proposal in terms of certification, but what I can advise is that if the bill goes forward as proposed, with schedule 3 on FARPACTA, I don't know if there's a clear understanding that Canadian-trained teachers will surpass or be put forward or prioritized previous to internationally educated teachers—Ontario-educated candidates or applicants; excuse me. I just want to make clear that we're trying to instill a fair practice for all applicants to be certified equally and not have one class of applicants override another.

Mr. Wayne Gates: I'm going to have a long talk with my colleague the labour critic as well to talk more on your issue.

Freddy, could you answer, please? We've only got a few seconds—

The Chair (Ms. Natalia Kusendova): Thank you very much. Sorry, but we are out of time.

I'd like to thank all of our presenters today in this group.

MR. ABDULAH RAED

MR. HOUSTON GONSALVES

DR. TERESA SCASSA

The Chair (Ms. Natalia Kusendova): We will now be moving on to our next set of presenters. We have with us, via teleconference, Abdulah Raed. Welcome. You may begin by stating your name for the record. You have seven minutes.

1600

Mr. Abdulah Raed: Hi. This is Abdulah Raed. I'm in Gig Workers United. I've been working since 2018 with

DoorDash, Uber and SkipTheDishes, and Instacart as a grocery shopper and delivery.

The first item I'd like to discuss is section 7, right to information, point 2: "Whether tips or other gratuities are collected by the operator and, if so, when and how they are collected." The system doesn't have transparency as it's clear—if the customer gave me a $10 tip, would I receive $10 or $5? I know customers were verbally telling me that they gave me a certain amount and I got lower or more than that amount, so I don't have that transparency of what the tips are that I'm receiving.

The second point I'd like to discuss is section 4, point 1, about the estimated pay. It says, "The estimated amount the worker will be paid for the work and a description of how that amount was calculated." Still, that doesn't give me the chance to say if I agree with that or not or how I would get that estimated. There's no control on the platform in how to estimate the worker's pay. What about the weather, the time? Is it after midnight? Did the worker take a break or not? It doesn't mention all of those, which keeps the issue that the workers will be forced to accept a lower pay than they deserve, only because they have to keep going to pay their bills.

One of the issues which this bill doesn't resolve for me is when I reject an order, for an example, after midnight hours. It's cold, it's dark, it's risky, the roads are slippery and I reject that order because the pay is too little, and then I get the order back with an extra of 10 cents or 15 cents. Sometimes I get the [*inaudible*]. Even if I reject it two times, I will still receive it a third time, and now I don't have the option anymore to reject it because that will affect my rating, and that will affect my account, and I'll get punished in ways which I don't know. I don't know how I'm getting rated or how I'm getting punished and why I get less orders than others or others get more orders than me.

For pay loss, sometimes I lose access to the platform because of an issue with the platform. Or an incident which happened with me, with Foodora, previously: I was kicked out of the platform because I threatened a restaurant that I had a bomb, and then after a week of investigation, they told me, "No, that was a mistake." It was another driver, not me. So I lost income of one week. Can I claim that on my taxes as negative revenue of my business, or if I lost compensation?

As employees under the Employment Standards Act, when we get deactivated, we would have the right to a path to justice, to file it, to fight it, to go to a hearing at the Ministry of Labour for our rights, for my time, for my pay, to be able to keep paying for food for my family, for wrongful termination, for missed pay while deactivated wrongfully—it's not my issue that, by mistake, they deactivated me rather than another driver—and most importantly, to have the support of a lawyer while we fight for ourselves, for our rights, for our pay. This bill doesn't guarantee us this, and the Employment Standards Act does. This bill is less than that, and it's not enough.

About flexibility, let's say if SkipTheDishes controls when I should start or end my shift, I can't start whenever I want and end my shift whenever I want because I'll get punished. And when I'm picking my shift, there are certain times. I can't pick whatever times work for me. I have to pick whatever time works for SkipTheDishes. And if I was late by half an hour signing in, I would get punished and all of my shifts would be removed for the coming 24 hours without notice.

For engaged time, engaged time is a big question mark for me. What is engaged time and how is it considered? Does it include when I'm repairing my bike? Does it include when I'm changing my car oil? Does it include if I am delivering by walking? Does it include the time that I stop in a restaurant to have a meal to continue doing my job, to continue delivering and working? This is not engaged time. What about when I'm documenting all the receipts and all the pay logs and customer reviews to also calculate my taxes by the end of the year, to dispute an amount that I get paid, when I think I should get paid more than that, or when the customer gives me a poor review because they didn't receive the order and that review is false? I'm spending time. This is a part of my job. But this is not considered as engaged time.

This takes a lot of our time to fight and to convince the platform that this review was wrong or I'm owed money and I'm losing pay. The food order will then be shown on my pay, and I need to get paid for that order. I did my own due diligence. I went to the restaurant. I waited. I picked up the food. I went to the customer. I went on the elevator. In hard times, after midnight, in COVID-19, I went into the elevator. I waited 10 or 15 minutes, and even though [*inaudible*] going into that elevator.

Still, all of that documentation, keeping the receipts, is not considered engaged time. This is affecting us. Day by day, our wages are going lower.

The Chair (Ms. Natalia Kusendova): One minute left.

Mr. Abdulah Raed: I have been doing this since 2018, and our wages are going lower day by day by day. I'm controlled by the platform in all aspects: when to start, when to leave, the customer reviews. Even when I fight and I have proof that I brought the food or I handed the food to the customer or the grocery order, and still the platform wouldn't listen to me and I got a poor review. That affects my pay dramatically.

That's it. Thank you for listening to me.

The Chair (Ms. Natalia Kusendova): Next, we have Houston Gonsalves. Welcome. You have seven minutes for the presentation. You may begin by stating your name for our record.

Mr. Houston Gonsalves: First name is Houston, last name is Gonsalves. I am a gig worker. I am a food delivery driver for SkipTheDishes.

My background is a bit different from most other gig workers. I previously worked office jobs for almost 20 years. Then, about four years ago, I needed a change, so I decided to take a break from the office and I transitioned into working food delivery.

With my long experience working in offices, I believe I can go back to an office job at any time I want, so this food delivery job is not necessarily life or death for me.

But for many of my fellow food delivery couriers, this is their main source of income and, therefore, it is life or death for them to survive. I'm more so here to speak on their behalf as opposed to for myself.

Quite frankly, Bill 88 is ridiculous. While this bill claims to be paying minimum wage, this is only for engaged time. A food delivery courier goes out on the road willing to work, wanting to work, and yet if they don't receive an offer, they're not being paid for that time that they are willing to work or wanting to work. What other job treats an employee like that? We have people who sit around in offices all day doing next to nothing, and the majority of them, I bet, make way more than minimum wage. We have other labour jobs paying people who sit around for periods of time doing nothing, and I bet they make well more than minimum wage also. How fair is that to gig workers?

You can make light of how easy food delivery work is. It's not easy. I can tell you that this is much harder work than I ever had to perform at any of my office jobs. As food delivery couriers, we have to endure working in all weather conditions: rain, snow, ice, wind etc. We have to endure working whether it is plus 30 or minus 30. Is that not worth more than minimum wage?

1610

And, pathetically, it's not even minimum wage. If an order doesn't come in, a food delivery makes exactly $0 for that time. I repeat: $0. How is that going to help someone who is desperately trying to pay rent or even eat a meal? Some food delivery couriers have to work seven days a week, several hours a day just to be able to afford rent and food. What kind of life is that?

Further to that, Bill 88 doesn't address benefits that everyone should have access to, such as sick pay or vacation pay. If a food delivery courier gets sick, they don't get paid. If a food delivery courier wants to take a vacation like any other human being, they don't get paid. And less than a minimum wage, as based on how this bill works, as it is less than minimum wage, often doesn't even account for our expenses to perform this job, such as maintenance on our bikes or cars. Based on that sometimes, what is the point of even working? Most people want to work to actually make money and to live and survive.

During the pandemic, food delivery couriers were considered essential. This bill doesn't seem to indicate that at all, as food delivery couriers are not even guaranteed minimum wage. That's all I have to say. Thank you, all of you, for your time today.

The Chair (Ms. Natalia Kusendova): Thank you very much for your presentation.

We now have, via video conference, Dr. Teresa Scassa. Welcome. You have seven minutes and you may begin by stating your name for the record.

Dr. Teresa Scassa: My name is Teresa Scassa and I hold the Canada Research Chair in Information Law and Policy at the University of Ottawa. I'm speaking on my own behalf and not on behalf of the university today.

Thank you very much for this invitation to appear before your committee. The portion of Bill 88 that I wish to address in my remarks deals with electronic monitoring of employees in schedule 2. This part of the bill would amend the Employment Standards Act to require employers with 25 or more employees to put in place a written policy on electronic monitoring and to provide employees with a copy. This is an improvement over having no requirements at all regarding employee monitoring, however, it's only a small step forward. I will address my remarks to why it's important to do more and where that might start.

Depending on the definition of "electronic monitoring" that's adopted—and I note that the bill does not contain a definition—electronic monitoring can include such diverse practices as GPS tracking of drivers in vehicles, cellphone tracking and video camera surveillance. It can also include the tracking or monitoring of Internet usage, email monitoring and the recording of phone conversations for quality control. Screen time and keystroke monitoring are also possible, as is tracking to measure the speed of test performance. Increasingly, monitoring tools are paired with AI-enabled analytics.

Some electronic monitoring is for workplace safety and security purposes. Other monitoring protects against unauthorized Internet usage. Monitoring is now also used to generate employee metrics for performance evaluation with the potential for significant impacts on employment, retention and advancement.

Although monitoring was carried out prior to the pandemic, pandemic conditions and remote work have spurred the adoption of new forms of electronic monitoring. And while electronic monitoring used to be much easier to detect—for example, surveillance cameras were mounted in public view and were obvious—much of it is now woven into the fabric of the workplace or embedded on workplace devices, and employees may be unaware of the ways in which they are monitored and the uses to which their data will be put. The use of remote and AI-enabled monitoring services may also see employee data leaving the country and may expose it to secondary uses: for example, in training the monitoring company's AI algorithms.

An amendment that requires employers to establish a policy that gives employees notice of any electronic monitoring will at least address the issue of awareness of such monitoring, but it does very little for employee privacy. This is particularly disappointing since there had been some hope that a new Ontario private sector data protection law would have included protections for employee privacy.

Privacy protection in the workplace is typically adapted to that context. It doesn't generally require employee consent for employee-related data collection. However, it does set reasonable limits on the data that's collected and on the purposes to which it's put. It also provides for oversight by a regulator like the Ontario Information and Privacy Commissioner and provides workers with a means of filing complaints in cases where they feel their rights have been infringed. Privacy laws also provide additional protections that are increasingly important in an era of

cyber insecurity, as they can address issues such as the proper storage and deletion of data and data breach notification. In Canada, private sector employees have this form of privacy protection in Quebec, BC and Alberta, as well as in the federally regulated private sector. Ontarians should have it too.

Obviously, Bill 88 will not be the place for this type of privacy protection. My focus here is on changes that could be made to Bill 88 that could enhance the first small step it takes on this important issue. First, I would encourage this committee to recommend the addition of a definition of "electronic monitoring." The broad range of technologies and applications that could constitute electronic monitoring and the lack of specificity in the bill could lead to under-inclusive policies for employers who struggle to understand the scope of the requirement. For example, do keypad entry systems constitute electronic monitoring? Are vehicular GPS systems fleet management devices or electronic employee monitoring, or both?

I propose the following definition, and I did provide a copy to be circulated in advance. I hope you have it. "'Electronic monitoring' is the collection and/or use of information about an employee by an employer, or by a third party for the benefit of an employer, by means of electronic equipment, computer programs, or electronic networks. Without limiting the generality of the foregoing, this includes collection and use of information gathered by employer-controlled electronic equipment, vehicles or premises, video cameras, electronic key cards and key pads, mobile devices, or software installed on computing devices or mobile devices."

Ontario's privacy commissioner has also made recommendations to improve the employee monitoring provisions of Bill 88. She has proposed that it be amended to require a digital copy of all electronic monitoring policies drafted to comply with this bill to be submitted to her office. This would be a small additional obligation that would not expose employers to complaints or liability. It would allow the OIPC to gather important data on the nature and extent of electronic workplace monitoring in Ontario. It would also give the OIPC insight into current general practices and emerging best practices. It could be used to understand gaps and shortcomings. Data gathered in this way could help inform future law and policy-making in this area. For example, I note that the Lieutenant Governor in Council will have the power under Bill 88 to make regulations setting out additional requirements for electronic monitoring policies, terms or conditions of employment related to electronic monitoring and prohibitions related to electronic monitoring. The commissioner's recommendation would enhance both transparency and data gathering when it comes to expanding the regulations in this way and when it comes to workplace surveillance.

I thank you for your attention.

The Chair (Ms. Natalia Kusendova): We will start our line of questioning this afternoon with the government. Who would like to take the floor? MPP Anand.

Mr. Deepak Anand: First of all, I want to say thank you to all the presenters who came today. Houston, thank you; Abdulah, thank you; and Dr. Teresa, thank you.

Abdulah, are you a new Canadian? How long have you been in Canada approximately?

Mr. Abdulah Raed: I moved in 2018.

Mr. Deepak Anand: So, quick question: Why did you join this job?

Mr. Abdulah Raed: I joined this job for the flexibility, which with the time, I didn't see that. I joined because I don't have a limitation of when I can work, so I can work up to 18 hours. This is what I have been doing for the last few years. I did 18 hours a day. I worked seven days a week, including stat holidays and Christmas and weekends all over the year, as I increased my gig work.

1620

Mr. Deepak Anand: Something I heard from the other gig workers—I actually had a radio program, so I asked them a very simple question: "What are the issues that you have?" One of the issues they talked about was that they can't seem to understand: sometimes they make $1,000, some weeks they make $500. They spend the same number of hours, they walk the same distance, they deliver the same food, but still the compensation sometimes—I don't know how you want to look at it. If $1,000 is the right number, then they make half. If $500 is the right number, they make double. Either way their concern was, "We don't know how much we make." Is that a concern for you?

Mr. Abdulah Raed: Yes, there's no transparency, and we don't know how much we're getting paid. Some hours we make $5 per hour; some days we make $30 per hour. There's no rule. I can't tell you that Fridays are good or Fridays are bad. No. I don't have an understanding. One bad review, like with Instacart and delivery. I go to the grocery store, make the shopping and deliver it. One bad review will affect my pay for six months, and I can't prove that with my pay. I can't prove that with my hours spent on the platform versus the pay—the type of orders that I receive after the bad review. And lately I was noticing, especially with Instacart, there is a discrepancy about my gender. If I was a male or a female, I get different orders, and I have proof of that.

Mr. Deepak Anand: Speechless—that's the word I have. The only thing I want to ask more is, in terms of the dollar value, in your perception—and I'm not going to put you on the spot; I'm just asking—do you think that you were making more than minimum wage or less than minimum wage?

Mr. Abdulah Raed: Less than minimum wage. If I add up all the hours that I'm spending and the expenses, I definitely make less than minimum wage. What keeps me doing this is that I can do over eight hours a day.

Mr. Deepak Anand: One of the concerns I heard from others—and I'm not sure; I'm just asking to confirm it with you—was with Uber, I think. The person said when they stood up for their rights, they had to dispute it out of Ontario, which was impossible for them. To go out and dispute something, they would have had to leave the job. They would have to put the expenses to go there to do that. Do you have any idea? If you need to dispute it, can you dispute it in Ontario or can you not fight it here?

Mr. Abdulah Raed: I'm not sure how I can dispute it. All I know is that I should be submitting emails and calling the support centre, and they always don't help me or they will always answer me by, "Your question is not clear. Your dispute is not clear. Provide more information. Provide more proof." Even though I provide more information and more proof, I don't get any good response. It's like a computer who's responding to me. I have nothing to add. I don't know how I can dispute that. I never get a response.

Mr. Deepak Anand: I just want to say one more thing, Abdulah. I came to Canada, I emigrated from India, for a good life; I haven't emigrated for a bad life. Please take care of yourself. I know you're working hard, and I have a lot of respect for hard-working people, but 18 hours is going to put your health in trouble as well. I'm not trying to dispute your hard work. I have a lot of respect for your hard work. I salute your hard work, and I salute that you want to do better for yourself, but, at the same time, please take care of yourself as well.

Over to you, MPP Sabawy.

The Chair (Ms. Natalia Kusendova): That's my job, MPP Anand. So over to MPP Sabawy.

Mr. Sheref Sabawy: My question is for Dr. Teresa. Dr. Teresa, I read the definition which you propose, and I find it very close to what's in the bill. Can you kindly highlight what the major point is that you think within this definition makes a difference than what the definition is in the bill? I know that the wording is everything when it comes to policies, but I'm talking generally: What do you think is missing or what is the big change or difference between what you're proposing and what's in the bill? The spirit of it—I'm not talking about words.

Dr. Teresa Scassa: I guess, as a lawyer, I always talk about words. So I do think that there is real value in being specific about a definition, in part because of the way in which electronic monitoring is evolving and changing. Because this bill relies on employers who have more than 25 employees to draft policies with respect to electronic monitoring, and because electronic monitoring has evolved and changed in so many ways and now includes more than used to be traditionally considered electronic monitoring, I think there are two risks. One is that it poses a burden or hardship for employers who are trying to understand or anticipate what systems within their workplace actually constitute electronic monitoring—

The Chair (Ms. Natalia Kusendova): Thirty seconds left.

Dr. Teresa Scassa: —and also a burden for—so the first part is that burden for employers to not know what they should be producing policies for. And, then, of course, the problem for employees: If this is meant to provide transparency and policies with respect to electronic monitoring and it doesn't capture all of the ways in which they are monitored, then that can be a problem as well. So that's why I think specificity is helpful, to just make it clear what the range of things are that are captured by the concept of electronic monitoring.

The Chair (Ms. Natalia Kusendova): That concludes our time.

We will now move on to the official opposition. MPP Sattler.

Ms. Peggy Sattler: I want to say thank you to all three of the presenters very much. I want to start out with Abdulah and Houston and just share some of what we heard from other gig workers who have appeared before this committee.

One of the concerns that was raised was around the policies of the app companies incentivizing risky behaviour for gig workers. They used an example of a 10-second ping, where people had to respond to an order within 10 seconds, and so it would put workers in this very dangerous situation if they were on the road when that ping came, and that coupled with the fact that you don't have access to sick leave. We heard from a gig worker who had broken his arm and was out of commission for four months, but other gig workers talked about the risks that they incurred or the injury that they incurred because of this risky behaviour that is required by the app firms because of the policies that they put in place.

So I just wondered if you could both comment on whether this is an issue that you've faced, that you are having to work under these quite risky and dangerous conditions. How concerned are you by the fact that you don't have any access to any kind of support, either provincially or even federally? You don't have employment insurance, nothing, because you are not considered an employee. So maybe I'll start with you, Abdulah.

Mr. Abdulah Raed: About the 10 seconds on the order: I don't know if anyone heard this term before, but there's something called double-apping. Double-apping is something that became popular almost a year ago in COVID. When COVID started in early 2020, our wages went higher due to a higher volume of orders. By that summer of 2020, all the platforms updated their applications, and then, when we still had the higher volume of orders, our wages went lower with no explanation. So at that time, we had to move to double-apping. Double-apping is not flexibility. I'm not making more money to be rich and afford a luxury lifestyle. I'm doing double-apping only to keep maintaining the same lifestyle I had, to pay the same room I'm renting, to pay the gas for the same car I'm using.

So when I'm doing double-apping while driving and I get two orders, I have to pick. It's from either this one or that one, and I have five seconds here, 10 seconds there and 30 seconds to accept. It's very frustrating. If I'm driving and when I use my phone to accept or reject my order, I could be ticketed for that if a police officer saw me playing with my phone. But I'm not playing with my phone while driving. This is my workplace. Even now, you can see that I'm at my workplace. I'm not going for a trip. So that 10 seconds really puts my life in danger, especially when I'm driving on small roads, dark, at night. There are pedestrians walking and I have to look. It's either the pedestrians or my wages, my money. I need to accept that order. So this is very high risk, yes.

1630

Ms. Peggy Sattler: Would this bill help these concerns at all?

Mr. Abdulah Raed: No.

Ms. Peggy Sattler: Not at all. Okay.

Houston, did you want to comment on that?

Mr. Houston Gonsalves: Sure. When it comes to waits, having to navigate a car—to perform my work, I need to have access to the phone to pick up a delivery and get an order. It's very unsafe, trying to drive a car and constantly having to stare at your phone and then, when an order does come in, to attempt to accept it while still having to navigate the car and do it in a safe manner. If I don't accept that order, I'm not getting paid. So, yes, it's very difficult at times. I'm on Highway 401 and I'm trying to pick up an order, but I have to briefly take my eyes off the road just to accept this order.

Also concerning, any incident I've been in—there was one incident where I was stopped at a red light and two cars collided in front of me. As a result, one of the cars drove straight into me and completely crushed the front of my car. I could have been killed easily. I was on the way to pick up an order, so while I'm sitting there with the front of my car completely smashed almost into me, I took the time to contact SkipTheDishes and say, "I've been hit head-on by a car." The operator on the phone came back and asked, "Are you going to be able to complete the order?" I think you know the answer to that. They don't care for our safety, obviously.

Ms. Peggy Sattler: Do you see the provisions of this bill requiring you to be paid minimum wage for engaged time—is that going to have any impact on your safety concerns and the financial viability of doing this job?

Mr. Houston Gonsalves: Nothing whatsoever. For example, when that incident happened, insurance only covered so much to repair my car. I wasn't able to work without my car. For example, if I get a single parking ticket in a day, there was no point in me even going to work. The parking ticket itself takes away maybe an entire hour of pay, sometimes even an entire day's worth of pay.

Minimum wage covers next to nothing. Just look at the gas prices. How much am I making an hour when you consider how much I'm putting into my gas tank?

The Chair (Ms. Natalia Kusendova): Thank you so much. That concludes the time we have.

We will now move on to MPP Fraser.

Mr. John Fraser: Thank you to all the presenters for being here.

Houston, I have a question for you. You did mention insurance. You had an accident. Is that your personal coverage or are you insured through the app?

Mr. Houston Gonsalves: I'm not insured through the app, no. There is no coverage from SkipTheDishes. There is no insurance offered from SkipTheDishes, so that's my personal insurance.

Mr. John Fraser: Abdulah, are you covered at all through your own personal insurance for driving?

Mr. Abdulah Raed: Yes. Yes, personal insurance.

Mr. John Fraser: I'm not sure that insurers—are you covered for this in your policy? You obviously—

Mr. Houston Gonsalves: For what? Sorry.

Mr. John Fraser: Covered for driving, for driving as a living. When you write your policy, is that a question that you're asked? Do you have that kind of coverage?

Mr. Houston Gonsalves: I'm unsure. I've never—

Mr. Abdulah Raed: I'd like to comment on that.

Mr. Houston Gonsalves: Sorry; go ahead.

Mr. John Fraser: Go ahead.

Mr. Abdulah Raed: Sorry to interrupt. When it comes to insurance, not all insurance allows you to be delivering food or doing ride-share, and if you declare that, they might even cancel your policy or not renew it. Only a couple of them will allow you, and you need to have commercial insurance. I have a Honda Civic and the insurance is over $9,000 a year. I'm talking around $700 or $800 a month for the insurance, so I really can't afford commercial insurance. I can't, and if I had an accident and there was a delivery with me or a passenger with me—I don't know. I didn't get into an accident but—

Mr. John Fraser: That's interesting, because I know that through the Uber ride app there is insurance and there is some coverage.

A thing that I'm concerned about is that there is a whole bunch of—we're doing this bill to add gig workers to the Employment Standards Act. We're not actually giving them the protections that most other workers have, like health and safety protections, vacation pay, a right to organize—I won't go through the whole list again. But here we have a situation where we know that people may be under-insured, and I think, as all of us here—that puts you at risk, right? It puts the people who you're with at risk, because you don't have commercial insurance or you might get refused.

I'm just going to go back to how we're putting forward this bill and we don't really understand what's happening in the gig economy fully. This government is in a hurry. It's slapping a coat of paint on this bill, and—

Mr. Wayne Gates: Like lipstick on a pig.

Mr. John Fraser: Well, I wouldn't put it that way, but if you're going to say that, I'll agree. It's a really big concern, because it's not something that has come up at this committee before. I actually just talked to a previous deputant about that.

The Chair (Ms. Natalia Kusendova): One minute remaining.

Mr. John Fraser: That's something that needs to get addressed, because that's added risk. If you can't depend on your insurer, that puts a lot of stress on people. That's a problem.

Thanks for being here. Thank you, Chair.

The Chair (Ms. Natalia Kusendova): We will now go on to the government. MPP Sabawy.

Mr. Sheref Sabawy: If I can continue with Dr. Teresa again: Dr. Teresa, I read the definition, and it just so happens that I have been in IT for 35 years, and I've seen the change in this part of the work basis kind of thing. Now more people work from home, and they depend on the device, or the notebook or the phone, that work passed to them to do their job. With working remotely, it has now added more need for monitoring time online and what they

are doing online. Are they working or not working? Are they connecting? How long are they staying on each of the servers doing their job, or any other aspect of doing the job?

If the employer is supplying the device, the device belongs to the company, basically. How do you see that reflecting differently if the employee is bringing his own device? If he owns a notebook but is using it for work, it's different than using the corporate work device to do the job and doing some other things. Basically, do you think it gives different rights to the employer to monitor differently? That's the first question.

The second question would be in regard to how every employer has their own HR documents which you actually have to sign to receive the device, to do the work or even to have access to the company network, which, actually, identify exactly what they are doing and what they will be doing or monitoring. Do you think this could override that, or not?

1640

Dr. Teresa Scassa: Those are both interesting questions. Maybe I'll start with the second one first. I think it's certainly the case—this bill is drafted to apply to companies with more than 25 employees, and probably in most of those cases where there's monitoring software installed on computers or devices that are owned by the employer, then there are going to be acceptable use policies that the employee has to agree to. A lot of that is already going to be in place. The law doesn't make that much difference. It makes it clear that there has to be this notice, but that notice may already be provided. I think it will make a difference to some other forms of monitoring that may not involve acceptable use policies or other sorts of software. That's why I think capturing a broad range in the definition is important. I think that there still remain other types of uses that we need to be thinking about.

In terms of the different rights of employers with respect to employee-owned devices or otherwise, it's an interesting question from a privacy law perspective. In terms of this particular bill, if an employer requires an employee to download certain monitoring software on their laptop or other device, they would have to provide the same notice if they are carrying out monitoring, whether it's the employee's device or the employer's device. So I don't think it has an impact on this bill, particularly, although it would be an interesting question in a privacy context.

Mr. Sheref Sabawy: Yes, but isn't that bill—if you agree with me or disagree—this bill at least enforces that the employer has to declare to the employees exactly to what extent it is going to be monitoring. I think this bill is meant to protect the employees from getting monitored for stuff they don't know about, by the employer.

Dr. Teresa Scassa: Yes, and that is the contribution of the bill. Again, I think a definition is important so that notice is actually provided about a broad range of policies. That is the contribution, but it doesn't give the employees rights to complain that it's excessive monitoring or that the company is doing other things with the data beyond simply monitoring for certain practices, or that certain uses are unreasonable. There is no complaints mechanism as to the substance of the monitoring, and I think that's the important next step in terms of employee privacy.

Mr. Sheref Sabawy: In general, in your evaluation, do you agree? Do you support that schedule? Do you support this bill or do you not, in general, on the conceptual side of it?

Dr. Teresa Scassa: I see no advantage in not enacting this provision, but there isn't a great deal of advantage in enacting it. I don't think it contributes significantly to employee privacy, particularly given that, again, larger employers already typically have acceptable use policies. It's privacy rights that I think are important in this context.

Mr. Sheref Sabawy: The final point here is that, in regard to declaring what's being monitored, I think the whole meaning of the bill, and this schedule specifically, as I understand, is some employers will be able to collect data about what the employees are doing, and they can act on it, like taking any measure, punishment or firing actions or whatever. I think this schedule is meant to make sure to declare upfront exactly what the employer is going to be monitoring so that if it comes to a dispute situation or ends up in court, basically there is a borderline of exactly what the right of each party is. It's not meant to regulate as much as it is meant to clarify the lines of their relation in regard to the employer-employee monitoring. Again, that's my understanding of the spirit of the bill.

Can you add anything on if this goes with the privacy laws generally? Because I don't think that this is covered by the privacy laws, this part specifically.

Dr. Teresa Scassa: Well, privacy law—if there were privacy legislation in place, there would be a requirement to provide notice.

The Chair (Ms. Natalia Kusendova): One minute.

Dr. Teresa Scassa: No, this is an important part of privacy, but there would be all these additional protections as well beyond simple notice.

Mr. Sheref Sabawy: I would like to thank you very much for joining us today. You're adding a very expert opinion in this area, which, I know, is a new area as well.

The Chair (Ms. Natalia Kusendova): MPP Anand.

Mr. Deepak Anand: I know very limited time is left, but before we leave, I just want to acknowledge Abdulah and say this: What we're trying to do through this bill is definitely that we are making sure that you understand how the pay is calculated, and we want to make sure that if there are any work-related disputes, they are challenged right here in Ontario. If you stand up for your rights, you should be able to fight in Ontario. These are the things—

The Chair (Ms. Natalia Kusendova): Thank you. That concludes all the time we have.

We will now go to the opposition. MPP Gates.

Mr. Wayne Gates: I think the longer that I stay on this committee, the harder it is to look you guys in the face and not get emotional. The member just talked about how you will understand how you get paid. I think it was Houston that said very clearly that there are times that he goes to work and he gets zero pay—zero. I don't want to bring in

the Clerks and everybody in here, but none of us go to work and get paid nothing. Houston and Abdulah, I make $116,000 a year. The guys across me that are doing this bill probably make $30,000 or $40,000 more than that. They go to work; they get paid. When you guys go to work, you should be paid for every hour that you work. It's sad to hear that you're working 18 hours a day, seven days a week, to pay for your rent, your food—I don't know if you have a family or not—in this country or, quite frankly, in this province, and this government brings forward a bill that's going to have you guys go to work and get paid zero for part of the time that you work.

Houston and Abdulah, I was really moved by both of your presentations, maybe because it has been a long couple of days listening to these stories on how you guys have to go to work. You talk about how you go to work in weather, whether it's cold, whether it's rainy, whether it's sleet out.

The insurance issue that was just raised is really new to me, quite frankly. I hadn't thought of that. I'm sure there are people out there that are really underinsured. Some are probably doing it with no insurance. I'm not sure of that, and I can't prove that.

I just want to say to you that I really would like to apologize that there's a bill talking about gig workers in this province that is going to have you guys go to work and work for free for part of your shift. So on behalf of me and my colleagues—I don't know about the other side—I apologize that we're debating this bill, because I hate to see how you guys are feeling right now, having to tell us what you put up with every single day, 365 days a year. I believe that everybody deserves to be covered by the Employment Standards Act. I believe a worker is a worker.

To hear what you guys are going through, the maintenance on your car or your bike—a lot of guys and ladies ride bikes to do these jobs as well, and there's a cost to that. You've got to have a half-decent bike to do this job as well. Like I said, it really got to me when you said that you're working for free for part of your shift.

Anyway, I'll ask you some questions. I might have rambled a little bit there, but it truly touched me. I want you guys to understand that, and it certainly opened my eyes over the last couple of days on how gig workers are going to work in this province. We've got to do better. I'm not blaming just the Conservatives; I'm blaming the NDP and the Liberals and the independents. We have to do better. You guys are all workers. You deserve to be treated with respect and dignity in this province, and hopefully this government will decide to pull Bill 88 and we can all get together, collectively, and come up with something that works for you guys and for workers in the gig economy. There are 800,000 gig workers in this province. One in five workers in this province are gig workers, and they deserve to be treated with respect and dignity in the province of Ontario.

I'll ask you a couple of questions. I'm sure I utilized a lot of my time. It shows in my next question just the imbalance of power when it comes to dollars and cents in what's happening. The CEO of DoorDash, Tony Xu's net worth is nearly $3 billion. Do you think he can afford to ensure employees are paid and covered under the ESA? Both of you guys can answer that, if you like.

1650

Mr. Houston Gonsalves: Do I think he can afford it? I'm going to say yes. I can leave it at that.

Mr. Wayne Gates: Abdulah?

Mr. Abdulah Raed: I'm not sure exactly what to say.

Mr. Wayne Gates: It kind of shows what I'm trying to say here—that we have employers and CEOs that are getting extremely rich on both of your backs. What I'm saying is that—and I said this earlier to somebody—when you live in countries like Canada and the United States that really were built on our economic power, by sharing the wealth, we've gotten away from that, where employees were taken care of, whether that was in fair benefits or, in some cases, unions were able to bargain collective agreements. How you guys are being treated—I just wanted to show that he's making $3 billion as a CEO, his net worth.

Yesterday, late in the day, we witnessed some members of government get rather upset with the idea that legislation was drafted and presented to benefit large multinational corporations—because that's what these are. They seemed to make an argument that workers should be grateful for corporations like Uber or DoorDash that create jobs.

Do you think that the major international corporations behind online services in Ontario have the best interests of workers in mind? Both of you can answer that.

Mr. Houston Gonsalves: That's pretty obvious. They're in it for their own interest. They can't even afford to pay us minimum wage, and they're making—I don't know what number you just quoted—millions upon millions of dollars. If you add up all our workers—we don't make millions upon millions of dollars when you add up even the entire workforce.

Mr. Wayne Gates: Abdulah?

Mr. Abdulah Raed: This is not creating a job or an opportunity for me. It's creating profit for the platforms.

Whenever they need me, they will start giving me promotions. Whenever it's cold, minus 35, and there's a warning, "Please don't go out of your home; don't drive," they will start giving me promotions.

The Chair (Ms. Natalia Kusendova): One minute left.

Mr. Abdulah Raed: They will start asking me to go out. They will start telling me, "The customers have more orders. You will get more pay." But when I need to pay my rent, when I need to change and fix my winter tires—I never had winter tires, which puts my health at risk and puts my family at risk. I was asked before—yes, I have a family; I'm married. I'm putting myself and my family at risk when I don't have winter tires, and I still can't afford it.

They don't create jobs for me. They're creating profit for themselves only.

Mr. Wayne Gates: Thanks for your honesty, my friend.

Why do you think the government doesn't want to ensure that gig workers are protected by the Employment Standards Act? And why create a second class of workers

who will lose a large portion of their wages—and as we just found out from Houston, some of that time is at zero wages, nothing. That would happen in a Third World country, maybe, and probably not today. So why do you think—

The Chair (Ms. Natalia Kusendova): Thank you so much. That concludes all the time we have. Seeing that the independent member is not here, that concludes our round of questions for this group.

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

DON VALLEY COMMUNITY LEGAL SERVICES

The Chair (Ms. Natalia Kusendova): Now I'm happy to welcome our next group of presenters. We have with us, representing the Information and Privacy Commissioner of Ontario, Patricia Kosseim, the commissioner, as well as Lauren Silver, senior policy adviser, who is appearing via teleconference. Welcome. Thank you so much for being with us today. You have seven minutes, and you may begin your presentation by stating your name for the record.

Ms. Patricia Kosseim: Good afternoon. Thank you for the opportunity to present my views on Bill 88. Accompanying me today is Ms. Lauren Silver, senior policy adviser from my office.

My focus today will be on schedule 2 of the bill, having to do with electronic monitoring policies that you heard about in the previous panel. I'm encouraged by the government's effort to promote transparency of workplace monitoring practices. Particularly since the pandemic began, demand for workplace monitoring and remote surveillance tools has dramatically accelerated, as more people work from home. According to Statistics Canada, in January 2021, 32% of Canadian employees mainly worked from home, compared to just 4% five years before. Even as the pandemic ends, a recent Ipsos poll predicts only half of Canadians currently working from home expect to return to the office regularly in 2022.

As more people work from home, employers are seeking new ways of supervising and measuring employee performance remotely. This shift is resulting in increased demand for employee monitoring technologies. The productivity software industry, for example, is steadily growing and expected to hit an estimated $38 billion by 2027.

Employee monitoring software, also referred to as bossware, has many different capabilities, including the ability to:

—monitor computer activity such as mouse clicks, keystroke logging, email communications, network activities and screenshots;

—record employees through webcams and microphones and analyze their facial expressions to interpret sentiments and even behaviours; and

—track employee location, movements and activities remotely and over time through tools like GPS, telematics, wearables, digital health apps and biometric timekeeping software.

When combined and fed into algorithms, all of these data can provide employers with a rich source of information to not only detect and flag employee behaviours but also predict and nudge behaviours as well. Automated decision-making based on inferred characteristics can influence employee performance evaluation and prospects for success and promotion.

Advancements in technologies and analytics are only expected to intensify these current trends, so it's easy to see the potential for electronic monitoring tools to get predictions wrong or just go too far, particularly now that the workplace can extend to the home or wherever employees happen to be.

So where do we draw the line between personal and private space? How do we determine which activities should or should not be monitored when an employee is working from home? Does electronic monitoring extend to location tracking, website searches or personal calls during time off? Does it include monitoring their social media activity?

To address these kinds of issues, I believe electronic workplace monitoring should ultimately be governed by a more comprehensive Ontario private sector privacy law similar to the one proposed last year in the government's white paper. Such a law would be similar to existing laws that have existed for over 20 years in British Columbia, Alberta and Quebec that already extend privacy protection to employees, as does the federal privacy law for federally regulated workplaces. Yet, there is no statutory privacy protection for employees of provincially regulated businesses in Ontario.

As with any collection, use and disclosure of personal information in the employment context, as in other contexts, transparency and accountability of organizations are critical. Bill 88 is a first step in enhancing transparency by requiring certain employers to provide employees with copies of their electronic monitoring policies, particularly given that much of what's going on today is invisible to most workers.

But transparency alone is not sufficient. Accountability, too, must be strengthened by allowing workers to do something with those policies. They should be able to complain when employers don't comply with workplace monitoring policies. They should be able to ask for an investigation and seek meaningful redress if they are affected by breaches of those policies. They must be able to challenge over-invasive policies that go too far and have them reviewed by an independent regulator with the power to encourage or impose course correction. There should be established boundaries around acceptable employee monitoring based on what's fair and reasonable and clear prohibitions against monitoring employees surreptitiously or after they've disconnected from work. These are some of the basic hallmarks of a modern privacy regime that should protect the privacy rights of employees and, indeed, all Ontarians.

Until more a comprehensive privacy law is introduced, I recommend that Bill 88 be amended, at the very least, to

require employers with 25 or more employees to provide a copy of their electronic monitoring policies to my office. This would allow the IPC to examine these policies, identify emerging patterns and trends across different sectors and provide education and advice on best practices. Based on our general observations, we could report to the Legislature from time to time on the general state of workplace electronic monitoring in Ontario.

1700

This window into workplace privacy could provide a basis of evidence—

The Acting Chair (Mr. Stephen Crawford): One minute.

Ms. Patricia Kosseim: —and help inform the development of future regulations by focusing on areas of highest risk. It could establish a body of knowledge that would help employers, employees and legislators find a positive path forward amid new technological developments in a rapidly evolving and uncertain future of work.

Ontario employees deserve real transparency, accountability and privacy protection in this new era of remote work. To achieve that, I'm recommending that Bill 88 be amended to allow for an incremental approach towards protecting privacy in the employment sector. Thank you for your time.

The Acting Chair (Mr. Stephen Crawford): We'd now like to go to our next presenter, Don Valley Community Legal Services. If you could please state your name, and then you have seven minutes.

Mr. Andrew Langille: My name is Andrew Langille.

The Acting Chair (Mr. Stephen Crawford): You may proceed.

Mr. Andrew Langille: Firms such as Uber, Lyft and SkipTheDishes rely on a business model predicated on the use of precarious, temporary, disposable workers in software application-mediated or -brokered work to ensure success. The conditions of this work for these workers are marked by low wages, sharply decreased bargaining power and the downloading of various forms of risk, widely insufficient regulatory protections, lack of access to appropriate health and safety or workers' compensation protections and a lack of meaningful access to income security under the Employment Insurance Act and workplace-based access to RSPs and pension plans.

In essence, Ontario is well down the road in creating an urban underclass serving the needs of the middle class and wealthy consumers. This precarious underclass in the making does not receive sufficient wages necessary for a secure existence, is permanently impoverished and generally cannot access any collective representation. Young people and students, migrant workers and international students, the disabled, women, recent newcomers and racialized people all face a disparate impact from the rise of precarious work in the gig economy while working for firms offering software application-mediated or -brokered work.

The effects our organization sees in the lives of our clients and community members arising from the gig economy is disheartening. Precarious work within the gig economy damages the very social fabric of our communities as workers struggle to provide the necessities of life for themselves and their families. Software application-mediated or -brokered work is inherently precarious and can often make it difficult to pay rent, purchase groceries or save funds to exit poverty or precarious situations. The rise of software application-mediated or -brokered work has doubly impacted historically marginalized communities, which already have had to contend with limited opportunities, discrimination and non-compliance with workplace law.

The vast majority of workers engaged in software application-mediated or -brokered work, in our experience, are racialized newcomer males, who are either newly arrived first-generation newcomers or present in Canada on some sort of temporary status or here as a international student. Software application-mediated or -brokered work offered by firms is viable in whole or in part due to discrimination that the gig economy workers face in the wider labour market. Furthermore, these firms are perversely benefiting enormously from discrimination that occurs, both direct and indirect, in the labour market and wider economy. Many of the clients who engage in software application-mediated or -brokered work have advanced professional or graduate degrees or qualifications in their home countries, but are unable to utilize their education, their skills here due to a host of barriers, of which discrimination sits foremost. It is not unusual, in our experience, that a medical specialist or engineer would be an Uber driver.

There is an issue of downloading economic risk directly onto workers. We are seeing highly capitalized and profitable firms offering software application-mediated or -brokered work shift large amounts of risk onto workers through practices like poor scheduling, zero-hour contracts, misclassification as independent contractors, asking workers to provide their own insurance or their own vehicle and a failure to provide health or retirement benefits. All these practices shift risk, in terms of time, health or money, onto the class of workers who are the most economically vulnerable and lack any effective forms of recourse.

Entrenching software application-mediated or -brokered work as precarious, insecure work environments—as appears to be the intention of the government of Ontario even after Bill 88 is adopted—is ill-informed public policy, given that racialized newcomers as of late are attempting to utilize this type of work as a springboard into the labour market and as a toehold into the wider economic ladder.

Currently, the springboard is not working very well, and after these anticipated regulatory changes, we do not foresee engaging in software application-mediated or -brokered work as anything other than a poverty trap, with the potential to permanently entrench an underclass in Ontario's major urban centres. We foresee extreme detrimental social impacts arising from the creation of this underclass that do not bode well for the social fabric and social cohesion, given that workers engaged in this software application-mediated or -brokered work stand to lose any meaningful statutory or regulatory protections.

And we would say that there has been a major problem over the last decade in the Ministry of Labour abdicating any responsibility for addressing some of the worst effects of the gig economy and not properly regulating this sector of employment.

Now, we do have a number of recommendations, and this is not simply directed at Bill 88 but more widely aimed at regulating the gig economy.

The Chair (Ms. Natalia Kusendova): One minute remaining.

Mr. Andrew Langille: It's our contention that every worker deserves security at work, fair pay and the ability to contest unfair or unjust decisions. We feel that all gig work has to be covered under the Employment Standards Act, the Occupational Health and Safety Act and the Workplace Safety and Insurance Act. This is non-negotiable in our view because anything else will embed a permanent vulnerability for these workers.

We also suggest the adoption of the ABC test, which is a three-part test that suggests that any dependent contractor arrangement is only legal if the worker is free from control, both factually and under the terms of the contract for performing the work, that the worker performs the work outside of the usual course of its business and that the worker—

The Chair (Ms. Natalia Kusendova): Thank you very much. That concludes the time we have for the presentation.

We will begin our questions with the opposition. MPP Sattler.

Ms. Peggy Sattler: Thank you, Commissioner, for coming here today. Thanks also to Mr. Langille for appearing before the committee. I just wanted to ask one question of the commissioner and then I will go to Mr. Langille.

There was an article that came out in the Globe shortly after this bill was introduced and an employment lawyer was quoted as saying that if a non-unionized employee is terminated for not wanting to comply with electronic monitoring, the law can do nothing about it as long as the person is compensated for the dismissal. He's quoted as saying, "We still do not have the answer to the question of what if you don't want to be surveilled? How do you still retain your employment?" I wondered, Commissioner, if you can elaborate on that? Is that a concern you would share, and how can we address that concern?

Ms. Patricia Kosseim: Thank you for the question. I do share that concern, particularly for non-unionized employees in Ontario who have no statutory privacy protections at all. As Canada's largest province, Ontario is really sidelined in that respect compared to BC, Alberta, Quebec and federally regulated employers. Particularly, there is always resort to the courts for unfair dismissal, but we all know that it can be exceedingly long, litigious, very expensive and not really an effective recourse or remedy at all.

1710

In contrast, when employers have remedies to administrative tribunals—for instance, data protection regulators—they can have their complaints investigated expeditiously and ultimately have the employer correct or amend their policies and practices in order to be more privacy protective.

Where we see the greatest transgressions is not in good, well-meaning employment privacy or monitoring policies. Usually, it's because they go too far. Usually, it's because they collect too much information. Usually, it's because they're completely disproportionate to what they're trying to do. So what they're gathering is far over and above what is necessary for managing an employer-employee relationship. It's in those parameters of necessity, proportionality and, ultimately, legitimate purpose that are the boundaries that privacy law really provides and that, in the absence of privacy law, employees just don't have in the employment context, particularly non-unionized employees in Ontario.

Ms. Peggy Sattler: Right. So this bill, by simply requiring an employer to have a policy but not putting any kind of boundaries on what can be in that policy, really could open up the door to a lot of employees' privacy—a significant overreach.

Ms. Patricia Kosseim: That risk exists today. Will it continue to exist, post Bill 88? The advantage of Bill 88 is that it does introduce a transparency. But if I were an employee and I got one of these policies and I was appalled or my employer was not complying with the policy or I wanted to object, there's nothing really in Bill 88 that allows me to challenge the employer in that respect. That's why I said that, from a transparency perspective, it's a good first step. But there's a lot of work to be done in terms of allowing for true accountability.

One way to do that: There is regulation-making power in the bill that would allow regulations that would regulate the content, what has to be in a policy, and would potentially set some prohibitions. So that could be an interesting avenue, but what I'm suggesting in the meantime is to collect a basis of evidence to inform those future regulations. The small incremental approach I'm recommending as an amendment is that the employers who have to have these policies anyway provide a copy to my office so that we could monitor trends and inform future regulation-making power in areas of highest risk in those sectors that pose the greatest challenge. So that's the small incremental approach toward—eventually, I hope, one day—true employee privacy protection in Ontario.

Ms. Peggy Sattler: Okay. Thank you very much.

I now want to go to Mr. Langille. You concluded your presentation with a recommendation to adopt the ABC test. I'm not sure if you're familiar with a private member's bill that I introduced called the Preventing Worker Misclassification Act, which would have done exactly that. It would have clarified and simplified the process within the Employment Standards Act for a worker to be identified as the employee that they are and therefore able to access all of the rights and protections of the ESA.

But I wanted to ask you, from your legal perspective: Is there a concern about the government creating legislation that suggests that there is a significant legal difference between gig workers through this Digital Platform

Workers' Rights Act, which means they have lesser rights and fewer protections compared to other workers who are covered by the Employment Standards Act? Does the existence of this act, should this bill pass—and we expect that the government will use its majority to do that—undermine the ability of gig workers to correct the misclassification that they experience all the time under the Employment Standards Act? We had a recent decision by the Ministry of Labour that said an Uber Eats delivery driver actually was an employee, and I wondered about your perspective on what the impact of this bill will be on the future ability to correct misclassification.

Mr. Andrew Langille: Well, I might pose back a question to you and to the other members. It's shockingly obvious that the workers for Uber, for Lyft, for SkipTheDishes have very little control over the conditions of work. They are controlled by algorithms that are developed in California, and they have little recourse over anything that occurs on the job. They can be deplatformed at will. They can have money taken back with no recourse. My question is: It's so obvious that these workers are employees; why doesn't the government use its power to declare that they are covered under the ESA, under the Occupational Health and Safety Act and under the Workplace Safety and Insurance Act?

I would suggest that this government is abandoning these workers because they are poor, because they are racialized, because they don't vote in sufficient numbers and—

The Chair (Ms. Natalia Kusendova): Thank you. That concludes the time that we have. I'm so sorry.

We will now move on to the independent. MPP Fraser, you're back. Welcome back.

Mr. John Fraser: Thank you. Thank you both for being here to present.

Thank you very much, Commissioner. I have a couple of questions for you. Your presentation was quite thorough, and your recommendation that we actually collect the information that we need to make informed laws, I think, is really important. It is an iterative process. My only comment is that the government is in a hurry to get this bill out the door, and we can see that because we've had one schedule that's pulled out and other schedules that are questionable.

What I wanted to ask you about was the actual definition of "electronic monitoring," which is not in the bill. In terms of identifying that, we had a submission from a previous deputant regarding the definition being in that bill. Do you have any opinion on that? Would it be helpful?

Ms. Patricia Kosseim: Thank you for the question. I do think it would be helpful, and I do think the definition that was proposed is a very reasonable one that would help both employees and, more importantly, employers to know what they need to do in order to comply with the legislation, and when and in what circumstances they need to have a policy in place.

The vastness of employee monitoring and surveillance tools and technologies these days, I think, really warrants a clearer definition. As I stated earlier in my remarks, there is not only a vast range of digital surveillance technologies, but there is a broad range of real-world applications. Having been in privacy law for over 20 years, there's not a day that goes by that—just when you think you've seen it all, you haven't quite seen it all, because there are always new applications and new technologies that surprise us every day, particularly in areas we never thought possible.

The clearer the definition could be and the more all-encompassing it could be, to make sure that employers know when they have to be transparent about these adopted policies—I think it's a good suggestion, a good recommendation, and I think the definition proposed was a very reasonable one.

Mr. John Fraser: That's great. Thank you very much. I'm glad to hear it. I thought it was very reasonable, as well, because we're actually making a law about something that we haven't defined. I think, as a first step, that should have been in the bill.

1720

That's all I have in terms of questions for you. I think your presentation was very thorough. I think that we do have to take an approach that does gather—your recommendation for gathering that information, I think that should be in the bill as well, and hopefully the government hears that. I'll put forward an amendment, if you want to support it. But if you want to put forward your own so you can vote for it, that would be great too. It doesn't really matter who does it. So thank you very much for your work.

How much time do I have left?

The Chair (Ms. Natalia Kusendova): One and a half minutes.

Mr. John Fraser: One and a half minutes? That's an eternity.

Mr. Deepak Anand: You have a full life.

Mr. John Fraser: I have a full life.

Mr. Langille, thank you very much for your presentation. We've had some earlier depositions from actual drivers and delivery people with regard to the circumstances that they find themselves in. They have basically almost no workplace protections that most workers in Ontario do—I'm not going to go into that.

One of the things that struck me—because we had one deposition from a driver where it was secondary income, so he has a different viewpoint of flexibility and what he expects out of it. I don't think we really understand here at this committee who's working for Uber and Lyft and SkipTheDishes and what their expectations are. I think they should be employees. But I can't see how the government is going forward with a bill that assumes that it's a secondary job for everybody. If you have any comments on that.

Mr. Andrew Langille: Multiple job-holding is a sign of precarious work; numerous studies have found that. Again, in our experience the vast majority of the workers who are engaged in gig economy jobs are racialized immigrants to Ontario. We're doing a great disservice by denying them fair—

The Chair (Ms. Natalia Kusendova): That's time—I'm so sorry. Thank you so much.

We will now go on to the government. MPP Sabawy.

Mr. Sheref Sabawy: I really would like to thank you, Ms. Commissioner, for joining us and giving us this analysis of the definition. Again, I'm just trying to clarify that—from my understanding, the bill is not to regulate what they can and cannot monitor, or how they monitor it or how they don't have the right to monitor. It's about declaring all that they're monitoring. The employees have the right to know exactly what the employer is monitoring. That's my understanding. I could be wrong about that, but that's my interpretation of reading the bill: forcing the employers to clarify or declare what exactly they are monitoring. And now we've got into discussing what they are collecting and if they have the right to collect that or not, which I think is beyond the bill.

In every corporation—I've joined many international corporations—when you start with signing your contract, you sign 10, 15 different forms of what you can do and can't do, be it behavioural or be it corporate relations or be it disclosures or non-competition, and many other aspects. I think it's part of those forms. If they're handing out a device, it would be exactly what you can use this device for. That has been the case—I've been working for international corporates for 36 years in IT, so maybe I signed those forms 27 years ago, at some point when I joined the bank, because they have to control exactly what I'm doing on my desktop or on my laptop if I'm out of the office.

So the whole difference here, because of the working from home now, there are now a lot of other workers who are actually accessing those devices totally off the premises, through VPNs or any other communication methods. They join the network of the corporate, then the corporate actually has to do many things to be able to sanitize and protect their network and test the machines and legitimacy of any software, what they have been doing. And on top of that, some of the corporates will go further, to actually have a list of the sites they visit and everything else.

My question here, as the commissioner for privacy and information—again, it's the same question I asked Dr. Teresa before: Do you think that if the employer is handing out the device, so the device is owned by the corporate, it would make a difference between bringing your own device—like BYOD, I'm bringing my own notebook and joining a corporate network—or I am accessing the network from the corporate device?

Ms. Patricia Kosseim: Thank you for the question. I just wanted to address, perhaps, the three parts of your remarks.

In terms of the definition, there was a definition that was tabled by the previous witness in the previous panel. I do think that it's helpful in terms of informing particularly future regulations, because future regulations under the bill could include setting out additional requirements for the content of the policies, terms or conditions of employment related to electronic monitoring and prohibitions related to electronic monitoring. With these potential future regulations, I think a solid definition would be helpful.

I also think that a basis of evidence that would be accumulated by the proposal I'm putting forward to be able to review not every single policy, but general trends in industry in high-risk sectors, in high-risk applications could also be very helpful in the development of future regulations to address, really, where the highest-risk areas are.

Finally, in terms of remote work, I think the risks are even higher, because obviously, whether it's a BYO device or whether you're working from your personal device at home but you're allowed to do so by your employer, subject to the downloading of remote software, monitoring software, it could really start to blend and blur the lines between public and private space. It becomes even more important to think towards the future of work in terms of what will really protect employees, not only in terms of transparency, but in terms of accountability and holding employers responsible for those kinds of remote surveillance practices, many of which they can download remotely without the worker even knowing. In fact, a study by the Electronic Frontier Foundation found that nine of 10 companies studied offered silent monitoring software that could collect data remotely without worker knowledge. The remoteness dimension that you're raising raises the level of risk even much higher.

Mr. Sheref Sabawy: I totally agree with you. I think the whole subject is coming to light because of COVID and the amount of people working remotely who were not by default working remotely. I know that, for example, fleets of trucks, the trucking companies already have been monitoring their trucks: the speed, what's the stop, when they stop, where they stop, what route—

The Chair (Ms. Natalia Kusendova): One minute.

Mr. Sheref Sabawy: —and all the details about that device, which is a truck in that case. It could be anything else. It could be any other device used for the job, basically. So just like the employees who used to be in an office are now monitored outside the office—which added this category under the surveillance. But again, do you know if the truckers, for example, know exactly what the company collects?

Ms. Patricia Kosseim: Thank you for the question. You're absolutely right: There are industries that have been surveilled long before COVID. Telematics in the trucking industry, remote logging and keyword network activity on desktop computers in the office: These kinds of surveillance technologies have been around. COVID has certainly accelerated the development of these software technologies—

The Chair (Ms. Natalia Kusendova): Thank you so much. I'm sorry, but we are out of time.

We will now go back to the opposition. MPP Gates.

1730

Mr. Wayne Gates: It's always a pleasure. This will go to Andrew. Why do you believe that the government decided to create a second-tier worker that is not protected

by the ESA? And I know you were talking a little bit about that when Peggy finished, so you can elaborate as much as you like on this issue.

Mr. Andrew Langille: Sure. The interesting thing about Bill 88 is that it doesn't specifically exclude gig workers from the Employment Standards Act. It's actually completely silent on what protections under the ESA will be potentially extended to them through the Ministry of Labour or through the courts. But that is a striking problem with Bill 88, insofar as we've had the problem with gig work existing in Ontario for well over a decade. The previous Liberal governments didn't address it, and now we have a Conservative government who is, I guess, taking only the tiniest step forward. But in this tiniest step forward, it remains that these workers are being denied the protection that they so desperately need.

The thing that really irks me is I've seen numerous injuries that gig workers have incurred: broken feet, broken bones, being in car crashes. Oftentimes, they cannot access the workers' compensation system. They don't have protections under the Occupational Health and Safety Act, for the most part, and the conditions of work, frankly, during the pandemic, deteriorated, and we've done nothing for these workers except continue to exploit them.

And I would not place all the blame on the government, but it's a collective problem, because every time we use these services, we're contributing to exploitation. It certainly doesn't have to be that way because, clearly, there's a tremendous amount of money to be made in on-demand car delivery, on-demand food services. So this isn't an issue that these are firms that are unprofitable. Quite the opposite: They're highly profitable firms, and for whatever reason, I guess because they're technology companies and they wave some sort of magic wand, we continue to treat them as some sort of different beast all together.

The gig is up—pardon the pun—but it's obnoxious and it's obscene that this is being allowed to persist in 2022. It is high time that these workers are treated as what they actually are, which are employees. Extend the protections to them and just get it over with. It's going to happen either through the Ministry of Labour or through the courts. It may take another five years, but in that time, untold billions of dollars are going to be denied in wages to some of our most vulnerable workers, and that's inexcusable.

Mr. Wayne Gates: I appreciate your honesty on that question. But it could happen sooner, when we get a new government on June 3. So that may help gig workers in the province of Ontario. I've got a question for you—

Mr. Andrew Langille: I don't predict the future, sir.

Mr. Wayne Gates: I can, though.

So you agree with me—and I've said this almost continuously—a worker is a worker. Do you agree with that statement?

Mr. Andrew Langille: Of course.

Mr. Wayne Gates: Okay, I just wanted to make sure, because my colleagues don't feel that way—

The Chair (Ms. Natalia Kusendova): I'm sorry, MPP Gates, that's not an appropriate comment.

Mr. Wayne Gates: Okay, I appreciate that.

The Chair (Ms. Natalia Kusendova): I've given you a lot of lenience today, but—

Mr. Wayne Gates: You're always good to me—I appreciate it—as Chair.

The Chair (Ms. Natalia Kusendova): Okay, thank you.

Mr. Wayne Gates: Sometimes I say things that aren't the way they should be done, and I appreciate the fact that the Chair is very lenient with me, so thank you.

Do you believe that it would better protect workers if this government did not refuse to use the ABC model to determine the status of workers which was in the bill that my colleague MPP Sattler—who is beside me—put forward, and this government, for some reason voted against.

Mr. Andrew Langille: Well, frankly, I don't think it matters what test you use, either under the ABC test or the four-fold test or the business integration test. There are any number of tests, and you get to the same point if everything is properly applied. That point is that Uber drivers and delivery people are deemed to be employees, if the tests are properly instituted and properly utilized.

One of the major problems that we've seen is that there has been a complete abdication on the part of the Ministry of Labour in the role as a regulator. This is part of a wider trend that we're seeing within the justice sector. We can't get human rights decisions from the Human Rights Tribunal of Ontario. It isn't appropriately staffed. We're not getting the action that's necessary from the Ministry of Labour, and the courts are backed up.

So in terms of workers accessing justice and getting timely resolution of their workplace disputes, there's a wider problem. I would place the gig worker issue within it, but obviously it has much wider dimensions, because we're playing games around who is actually an employee. It's obvious, I think, to anybody who's listening to the testimony today from the drivers, that they are employees.

Again, I think the government needs to take another stab at this, although there's probably not enough time, and move on declaring these gig workers to be employees and giving them the appropriate protections that they so rightly deserve. These are some of the most hard-working individuals who are trying to build a life in Ontario, and we should help them, not hinder them.

Mr. Wayne Gates: I agree with you, and I just want to say that these multinational corporations, the big three that are in this province, their net worth is $84 billion, so I think they can certainly treat their workers fairly and pay them correctly as well.

Mr. Andrew Langille: A few more dollars an hour.

Mr. Wayne Gates: We found out today, one of the workers said that he goes to work and makes $0 an hour, because it's not engaged time.

I appreciate you being here. I appreciate both of you being here. Thank you.

The Chair (Ms. Natalia Kusendova): That concludes our time. Thank you kindly.

We will now move on to MPP Fraser.

Mr. John Fraser: I know this is the second day in a row—am I getting the last word here? Do I get last word again?

The Chair (Ms. Natalia Kusendova): No, we have the government still.

Mr. John Fraser: Oh, that's too bad.

The Chair (Ms. Natalia Kusendova): Nice try, though.

Mr. John Fraser: I'll keep it short. I just want to thank the commissioner and Mr. Langille for presenting today. Your presentations were very thoughtful, and I hope that the government, in both cases, will withdraw schedule 1 and amend schedule 2 so that it becomes a more workable piece of legislation, that we can actually protect people's privacy in the workplace.

The Chair (Ms. Natalia Kusendova): Now to the government. MPP Anand.

Mr. Deepak Anand: To the commissioner, that was very elaborate, so thank you so much. Some of the things which I was listening to attentively, one of the things that came to my mind is the intent. The intent is good, that we want to have this. But implementation—if not implemented well, what is that going to do? So what is your suggestion for the employers? How do we implement it with the employers, or what kind of training should we provide to the employers? What's your suggestion on that?

And I do know MPP Sabawy would like to take some of my time as well.

Ms. Patricia Kosseim: Thank you for that excellent question. I was working in private practice in Quebec when the Quebec private sector privacy law came into force, and I worked at the federal privacy regulator when the federal legislation came into force. And in those early days, particularly for privacy law that applies to employment contexts, much of our time was spent on education, developing best practices, helping employers in terms of complying with the legislation.

So I would say, in terms of implementation, it's going to be important, I think, to support employers to know, most importantly, not only when they have to have a policy and be transparent about it but what goes into the policy, the importance of complying with the policy, the importance, as I said before, of certain parameters so they don't go beyond, over and above, what is necessary in order to reasonably manage the employer-employee relationship.

1740

Because the bill is not a privacy law, clearly, but is a small, incremental measure, as I said, an amendment that requires employers with 25 or more employees, since they have to have a policy anyway, to provide a digital copy to our office, we can determine, assess and monitor for trends. We can determine where there are risk factors and help provide education and best practices to the employers and the employment sector but also to future regulators that will adopt regulations under the bill, to make it even more workable and more feasible to implement with regulations eventually in place. Those are the kinds of things I think will assist implementation in order to make it actually meaningful, beyond just providing a copy of the policy.

Mr. Deepak Anand: Thank you, Commissioner.

The Chair (Ms. Natalia Kusendova): MPP Sabawy.

Mr. Sheref Sabawy: I'm back to the same point, talking about collecting information. There are two types of disclosure which I will talk about, and maybe you can add to that. For example, Google collects all the information about what we do, where we go, what we are looking at and everything else. The only difference between this and that is, if you accept the policy, saying "I accept," then everything is open. Microsoft, any of the software you install: "I agree." I bet you a dime to $100,000 that 99% of people don't even read that disclaimer, because you wouldn't even understand exactly what it is. It's going to be five or six pages of everything in the world, and then "I agree" at the end with a small box. And for you—not you, but, I'm saying, any regular person will check the box, continue and that's it.

So, again, when we come to that, that question here would be, do we have to regulate to the limit to say the employer has the right to monitor this but not this or monitor this to that extent and not beyond that? I think it's going to be very difficult to draw a line here more than a code of ethics or a disclaimer—or even leave it to the public, because if somebody gets to a limit where he discovers that his employer takes action based on stuff he signed that the employer is monitoring already, he will leave reviews, and then the people who are going to get hired will review that and see, "Oh, this employer is big in this or big in that." Do you think the government has to go that far, to say that the employer can monitor this or cannot monitor that?

Ms. Patricia Kosseim: Thank you for the excellent question. Google's privacy policies are probably more than five pages, and I, like every average Ontarian, have a real tough time going through those policies. In the employment context, the distinction is, employees can't click "I agree." They have, largely, no choice, and that's the inherent vulnerability in an employment sector. So I think that adds even more urgency and importance of regulating employee privacy in the workplace.

In terms of regulating this area, there are certain parameters. The government would not need, or the legislation would not need, to be prescriptive and to say, "This monitoring technology, you can use; that one, you don't." There are general parameters that are well ensconced in privacy laws. Principles of transparency is clearly one, but there's also accountability, necessity, proportionality, principles around reasonable and appropriate purpose, and this is where particularly data regulators, like my office, will interpret what is a reasonable and appropriate purpose.

The Chair (Ms. Natalia Kusendova): MPP Anand.

Mr. Deepak Anand: I just want to ask the other representative, Mr. Langille: Those people who do sign up at the same time on not just one app but two or three apps—

The Chair (Ms. Natalia Kusendova): One minute.

Mr. Deepak Anand: This is one of the things which I was talking about to some of the drivers, especially in the downtown core. They wanted to have that flexibility—that they should be on not one app but on multiple apps. Would

you consider that they're on three jobs—or would you consider them as flexible? How do we address that in this case?

The Chair (Ms. Natalia Kusendova): Can you address your question to someone, please?

Mr. Deepak Anand: Andrew from Don Valley Community Legal Services.

The Chair (Ms. Natalia Kusendova): Andrew, are you able to respond to the question? Did you hear the question?

Mr. Andrew Langille: No, I didn't hear the question. Can you repeat it, please?

Mr. Deepak Anand: Andrew, some of the digital platform workers said that they want that flexibility of being on more than one platform. As an example, they want three different platforms; that means three different jobs. In that event, how do we include that in this structure?

Mr. Andrew Langille: I think if your government instituted a minimum wage for all these workers for all the times that they are devoted to both driving and waiting for the calls to come in, they wouldn't have to be on three apps. That's called multiple job-holding, and it's a form of precarious work—

The Chair (Ms. Natalia Kusendova): Thank you very much. We are out of time.

Thank you to all of our presenters. We really appreciate you being here with us today and presenting on this important topic. This concludes our business for today.

I see, MPP Fraser, you have a point of order.

Mr. John Fraser: I just wanted to make the committee aware that after clause-by-clause on Thursday, I'll be putting forward a motion.

The Chair (Ms. Natalia Kusendova): Thank you for the notice.

As a reminder, the deadline for filing amendments to the bill is 10 a.m. on Wednesday, March 30, 2022.

This committee is now adjourned until 9 a.m. on Thursday, March 31, 2022, when we will meet for clause-by-clause consideration of Bill 88.

I want to thank all the members for your participation today as well as our wonderful staff for helping us out today. Have a wonderful evening and a safe drive home.

The committee adjourned at 1748.

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