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## **Official Report of Debates (Hansard)**

**Wednesday 20 June 2001**

## **Journal des débats (Hansard)**

**Mercredi 20 juin 2001**

**Standing committee on  
general government**

Occupational Health and Safety  
Amendment Act, 2001

**Comité permanent des  
affaires gouvernementales**

Loi de 2001 modifiant  
la Loi sur la santé  
et la sécurité au travail

Chair: Steve Gilchrist  
Clerk: Anne Stokes

Président : Steve Gilchrist  
Greffière : Anne Stokes

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Wednesday 20 June 2001

Mercredi 20 juin 2001

*The committee met at 1546 in committee room 1.*

**OCCUPATIONAL HEALTH AND SAFETY  
AMENDMENT ACT, 2001**

**LOI DE 2001 MODIFIANT  
LA LOI SUR LA SANTÉ  
ET LA SÉCURITÉ AU TRAVAIL**

Consideration of Bill 34, An Act to amend the Occupational Health and Safety Act to increase the penalties for contraventions of the Act and regulations / Projet de loi 34, Loi modifiant la Loi sur la santé et la sécurité au travail en vue d'augmenter les peines en cas d'infraction aux dispositions de la Loi et des règlements.

**ROB ELLIS**

**The Vice-Chair (Mr Norm Miller):** I'd like to call this meeting to order. I'm filling in for the Chair until he shows up. He's expected to be about 10 minutes late.

Today we're meeting to consider Bill 34, and we have some people here to speak to the committee today. Rob Ellis, if you would like to speak to the committee, you have 20 minutes. You may use as much time as you want of the 20 minutes and then there will be an opportunity for questions from the various parties afterwards.

**Mr Rob Ellis:** I'd just like to begin by thanking everybody here, particularly Mr Agostino, for the invitation to speak on this very important subject.

I want to introduce myself. My name is Rob Ellis and I'm a business owner in the city of Burlington. I have a family of three children and my wife. It's an important day for me to be able to speak to all of you.

In February 1999, my family lost our oldest son, David, in an industrial accident. He was only 18 years old. It was on the second day of his job that he was killed. He was left alone on the floor of a bakery that he was working at. He was given no supervision and no training and was working on the largest piece of equipment at the bakery, an industrial mixer, which had been inspected 18 months before, and a verbal warning was issued at that time to get guards and a safety lockout system on that mixer. Unfortunately, the warning was ignored by the owners of the company and not followed up by government inspectors. David had very little chance. David had plans to go to university in September.

The owners of the company were found to be negligent and the company was fined \$62,500. One of the supervisors was also fined \$7,500. The other supervisor was sent to jail for 20 days, served on the weekends. What the Ontario taxpayers don't realize is that the fines have actually been subsidized. They won't have to be paid off for another four years. The amount of downtime the company had: one eight-hour shift, and they were back in business.

Your kids would have liked David. He had no enemies. He had an 85% average all the way through high school, athlete of the year in his high school. He loved helping the underprivileged, feeding street kids, single moms and dads in places like Regent Park, east Hamilton—Kenilworth Street—and London.

If Dave were standing here today he would say, "Dad, don't get bitter and don't get angry. Go out and fight for my generation," and that's what I'm doing. Last year there were 16,000 young workers between the ages of 15 and 24 who were injured on the job in Ontario—16,000.

I go out to high schools, universities, colleges and corporations right across the province—corporations such as Weston Group, corporations such as Dofasco, corporations such as Ontario Power Generation. I ask workers to ask more questions of their bosses. I ask parents to talk to their kids about their close calls. I ask business leaders like myself to lead the way and provide more training and safety, recognizing that more training and safety will lead to more productivity and more profitability, always.

There used to be—and I emphasize "used to be"—an underlying feeling within Ontario taxpayers that if we raise the level of safety too high, businesses will go south of the border and fold up and nobody will be able to work. That way of thinking has gone by the wayside, primarily because of the excellent work the environmentalists have done. I know that if I have a spill in my plant, I'll have a jail term to serve or a fine to pay. Our kids now know how to protect our water and our air and our wildlife. Have businesses gone south of the border because of tough environmental laws? No, they have not.

Let's talk about loose truck tires. We don't hear of any more deaths along the 401 any more. Safety legislation brought in by the government was passed in 90 days. Have trucking firms gone south of the border? No they have not.

I've tried to encourage the thousands of people—literally thousands of people—I have talked to in the last

six months. I've spoken 31 times in the last 29 days. I've talked to them and I've tried to encourage them, that Ontario now has a plan in place and that plan includes education, enforcement and personal commitment. All of you sitting in this room have been in that plan in the last 20 years through seat belt safety legislation.

I think you can all recall that when seat belts were brought in 20 years ago nobody wanted to wear them: they were too uncomfortable, they'd drive the cost of cars up too high and, besides that, seat belts won't save lives. Twenty years have passed, and we know that seat belts do save lives.

On the education side, our kids all know that they have to put their seat belt on before they can get their G-1.

On the enforcement side, I always ask parents wherever I speak, "If the police pulled you over today, would you wear a seat belt if you knew the fine was going to be \$1.20, or do you wear a seat belt because you know it's going to cost you \$110 and two demerit points?" I still get adults shaking their heads up and down. They know the enforcement side is very important. I wear a seat belt because of the above reasons, but I wear a seat belt because I'm personally committed to my family. I know seat belts save lives.

On the labour side, we are making good strides. Education-wise, as of last September, all grade 9 and 10 students must take a health and safety course to get their diplomas, and next year it will be grades 11 and 12. And now I've got colleges calling and saying they want it on their curriculum as well.

On the enforcement side, unfortunately most of the response I've got from parents and workers is that we are weak in this area, that we're perhaps 10 years behind groups such as environmentalists and transportation. I know this plan we have in Ontario will succeed, but I am absolutely desperate today, and I will not wait for 20 years to see the fruits of success and to save lives.

Amending section 66 by increasing the ceiling of these penalties—that's just the ceiling—and making directors and officers of corporations liable if they are found to be negligent would send a strong message to all business owners in Ontario. However, this message is no different than the strong message sent out by the Ontario government in the 1990s to all corporate officers, like myself, who would continue to operate above the law of the land with respect to environmental issues. We all know as business operators that if we are operating above the laws of the land and we get caught, there is a fine or we go to jail.

I can only remind you that there were 16,000 young workers injured in Ontario last year. Young workers are the future of Ontario, and that is who this amendment will help protect. We must send a strong message: Ontario cares about its future. Is it worth fighting for? You bet it is. And I'll be on the front line fighting for our future.

**The Chair (Mr Steve Gilchrist):** We have about three minutes per caucus for questioning. We'll start with the Liberals.

**Mr Dominic Agostino (Hamilton East):** First of all, I want to thank Mr Ellis for being here today, of course, but as well for the tremendous service that you have given and continue to give to Ontarians through your work. Personal tragedies devastate, as in your case, your family and yourself, and often it seems the natural thing for people to do is to just sort of get away from everything. You have taken what really was a personal devastation and tragedy and used that as an opportunity to try to ensure that it never happens again to another young person or another person in Ontario. I think you should be commended. All of us owe a great deal of gratitude to you for the work you've done and the commitment you're taking forward.

I just want to ask you about a correlation. You talked about fines, and this legislation would significantly increase fines, but particularly it would increase the aspect of the opportunity. You gave the example of a director of a company that discharges something into the Hamilton Harbour who can go to jail and face a greater fine, penalty and jail term than someone who is neglectful and a person dies on the job. How important do you think that aspect is, that the highest level of corporations, the directors, if they're somehow found to be responsible as part of the neglect, also face the possibility of severe and stiff penalties, of up to \$1 million here and jail terms of up to two years? How important do you think that aspect is as far as sending a message out that it can't just be pushed on the floor, that the direction has to come right from the top down?

**Mr Ellis:** All I can say is that as a business owner myself, I don't think I will ever forget when in the 1990s environmentalists made the change and the directors from a major corporation in Ontario had the possibility of going to jail because of a spill. That major corporation was a shoe manufacturer here in Ontario, and it sent a very clear message to all Ontario owner-operators and directors that if they were found negligent, they had the possibility of going to jail. Not one person, as a director or owner, wishes to spend one day behind bars.

**The Chair:** Mr Kormos?

1600

**Mr Peter Kormos (Niagara Centre):** Feel free not to respond to this if you're disinclined, but you talked about how the company was fined, another supervisory person was fined as a result of the death of your son and then a third supervisory person, who one has to assume had direct control over the circumstances, got a 20-day sentence that was served on weekends. Again, feel free not to answer, but was that the sentence that was sought? I appreciate that's the sentence that the presiding judge or justice of the peace imposed. Was that the sentence that the prosecutor sought? If not, what was the prosecutor looking for that resulted in the justice of the peace or judge giving but 20 days on weekends? Do you recall?

**Mr Ellis:** I think they felt it was quite a precedent-setting case, that 20 days was a significant number of days behind bars. Do I need any further comment beyond that? Twenty days is a start. Is 20 days enough, served on weekends? I leave that for your judgment.

**Mr Kormos:** I think you can infer what my response is. We support the increased fines, the proposals in this amendment. We consider them laudable. You also made reference to the issue of enforcement. The biggest fines in the world mean zip if we know we can get away with it. You talked about a context of 18 months after a verbal warning—uncorrected. What would you advocate in that regard?

**Mr Ellis:** I think what we're talking about today are two different issues. We are simply talking about ceilings at this point in time. We are not talking about actual fines; we are talking about ceilings. The average fine for a company found negligent in the death of a worker is \$55,000. We're talking about apples and oranges here. At this present time today we are only talking about a ceiling, not the actual fine. That, hopefully, will come in time, when the general public voices their own opinion.

**Mr Kormos:** Thank you, kindly, sir, for coming today.

**Mr Ellis:** Thank you very much for your very good question.

**The Chair:** The government benches?

**Mr Norm Miller (Parry Sound-Muskoka):** First of all, thank you very much for coming in and telling your story so eloquently and with so much emotion.

Coming back to the fine levels, the current fine levels we have right now, the actual fines, are nowhere near the actual levels—

**Mr Ellis:** Not even close, no.

**Mr Miller:** So even if this legislation goes in and bumps up the levels—

**Mr Ellis:** Let me put it in perspective. I have a personal friend who owns a very large winery in Ontario. He was complaining that the government had fined him \$55,000 for a caustic spill he had two years ago. The fine was \$55,000 for three dead fish. The fine for my son's corporation was \$62,500. It shows you what a very good job the environmentalists have done and what a strong message they have sent out.

**Ms Marilyn Mushinski (Scarborough Centre):** Thank you very much, Mr Ellis, for coming in. Along with my colleagues from all sides, I wish to express my sincerest sympathy to you.

I guess my major concern has always been one of judicial accountability, for want of a better phrase. Given that the maximum fines are rarely, if ever, imposed by judges and juries, would you prefer to see minimum floors imposed to try to at least address the apparent inequities in fines that are imposed?

**Mr Ellis:** I think that's a very good question; thank you very much. I have never considered looking at a minimum. How do you equate a minimum amount with the death of a worker? In dollars and cents, there's just no value to that. I think what we are talking about here today is sending a very clear message to business owners like myself that if you wish to operate above the laws of the land and jeopardize the future of Ontario in people—not wildlife, people—then there will be heavy fines and

possible jail sentences. It's the message that we're sending.

**Ms Mushinski:** OK, so given that labour laws of course apply to people and not fish or wildlife, what you're saying is that you want the government to at least equate the importance of maximum penalties, I guess the punishment fitting the crime, in other words. In so doing, have you done an assessment of what, let's say, the maximum fines are under the Ministry of the Environment, for example? Are you suggesting that in actual fact they probably are higher in most instances?

**Mr Ellis:** In my research, I have found they are significantly higher, and environmental groups have lobbied much better than labour groups. We are catching up, slowly.

**The Chair:** Thank you, again, Mr Ellis, for coming before us here today and recounting your story. We appreciate it.

#### TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

**The Chair:** Our next presentation will be from the Toronto Workers' Health and Safety Legal Clinic. I'm told they would like to share their time with the Toronto Injured Workers Advocacy Group. So, if they could come forward to the witness table, please. Good afternoon. Welcome to the committee.

**Mr Daniel Ublansky:** Thank you. I have copies of the written submission, if I can pass them around.

**The Chair:** The clerk will be pleased to do that for you. Perhaps, as you get started, you'd be kind enough to introduce yourselves for the purposes of Hansard.

**Mr Ublansky:** I'd be happy to do that. My name is Daniel Ublansky. I am the lawyer-director of the Toronto Workers' Health and Safety Legal Clinic. With me are Linda Vannucci, my colleague at the health and safety legal clinic; Patricia O'Reilly from the Injured Workers Consultants; Orlando Buonastella, also from Injured Workers Consultants. We are all employed under the community legal aid clinic system, funded by the Attorney General.

For your information, the Toronto Injured Workers Advocacy Group includes the following members: Injured Workers Consultants, the Industrial Accident Victims Group of Ontario, the Toronto Workers' Health and Safety Legal Clinic, Parkdale Community Legal Services, Rexdale Community Legal Services and West Scarborough Community Legal Services.

The Toronto Workers' Health and Safety Legal Clinic is a community legal aid clinic, as I mentioned, which is funded by Legal Aid Ontario. Our clinic provides information, education and, if necessary, legal representation to low-income, non-union workers in Ontario, and we've been doing that since 1989. Last year, the clinic provided legal advice and representation to approximately 1,000 clients. In addition, we presented workshops on workers' basic rights under the Occupa-

tional Health and Safety Act to over 5,000 recent immigrants.

The workers that our clinic sees are among the most vulnerable in this province. They are employed in low-paying jobs and are exposed to scandalously poor working conditions. Their employers display little interest in or regard for the need to protect workers from hazards in the workplace. If a worker complains about safety conditions, he or she will initially be ignored. If the worker persists, he or she will be harassed and threatened. If the worker hints that he or she might complain about conditions to the Ministry of Labour, he or she will be terminated.

#### 1610

These vulnerable workers are totally at the mercy of their employers with respect to their health and safety. There is no support system in place to balance against the absolute authority of their employers over working conditions. The internal responsibility system has no relevance to these workplaces. Even if the workplace is large enough to qualify for a health and safety representative or a joint health and safety committee, these do not exist or are totally ineffective.

The only counterbalance to the absolute authority of employers in non-union workplaces is the Ministry of Labour's enforcement system. The non-union employers we deal with will only be motivated to implement basic health and safety improvements if: (1) there is an awareness that there is a real chance that an inspector will visit the workplace and discover the violations that exist; (2) if discovered, there is a real chance that serious violations will be vigorously prosecuted; and (3) if convicted, there is a real chance that they will be heavily fined or possibly sent to jail.

There is no other way to effectively protect Ontario's most vulnerable workers from the dangers that they face on a daily basis in our workplaces.

There will always be a substantial segment of the employer community that will only respond to the deterrent effect of aggressive enforcement and vigorous prosecution. It is no different than dealing with drivers who insist on exceeding the speed limit on our highways. Although the majority of motorists pay attention to posted speed limits, many don't. For that reason, the penalties for violating speed limits have been steadily going up and so has the level of enforcement. No one seems to question the deterrent value of aggressive enforcement and vigorous prosecution in relation to speeding violations.

The same is true with respect to motorists who drink and drive. Considerable amounts of energy and money have been spent on public relations campaigns to raise awareness about the tragedy and suffering created by impaired drivers who get into accidents on our highways. These efforts have led to a shift in society's attitude toward drivers who drink and thereby endanger innocent lives. That shift was achieved only because the public sent out a strong message to drinking drivers that this type of conduct will no longer be tolerated.

It's ironic that when it comes to the area of occupational health and safety, where over 100,000 workers suffer lost-time injuries and 400 are killed annually, there would be anyone who would question the need for heavy fines when grievous violations of the Ontario health and safety act occur. Heavy fines are the public's way of sending a strong message to people that it is not acceptable to kill or maim people in the workplace.

This is a government that has been saying since 1995 that its goal is to have Ontario's workplaces among the safest in the world. In addition, the Workplace Safety and Insurance Board has declared a zero tolerance for accidents and disease. These are lofty goals, indeed. We believe that increasing the penalties for violations of the act, together with a commitment to aggressive enforcement and vigorous prosecution, can make a significant contribution to the achievement of these goals.

I just want to depart for a moment from the prepared remarks.

Rob Ellis told you about what happened to his son David. Many of you may know that six or seven months after that accident a second young man was killed in a remarkably similar accident, a young immigrant, or a recent arrival, by the name of Ivan Golyashov. He was killed in October 1999, in the same apparatus David was killed in, approximately seven months later. About 10 months after that, the ministry decided to press charges against the owners of the employer and, I believe, a supervisor as well. The outcome is still pending.

A couple of days ago, after Mr Agostino had called me concerning the possibility of appearing before the committee today—and by the way, thank you for doing that; sorry I neglected to do that earlier—I happened to be reading the latest issue of the Canadian Occupational Health and Safety News, and I came across an item from Hamilton, Ontario, a place called Camel Pizza, where a business director and a supervisor received fines totalling \$110,000 after being found guilty of 12 violations of the Occupational Health and Safety Act in connection with an accident—sorry, it wasn't an accident; it was simply an inspection that revealed exactly the same deficiencies that led to the deaths of these two young lads. This is after an inspection that took place in June 2000, eight or nine months after the second young lad was killed in an accident involving that type of apparatus. The outcome is \$100,000 in fines spread over 12 different charges.

Again, it struck me, in answer to the possible question why do we really need—the fines are already pretty high, and why do we really need to go any higher? What possible use would that be? What benefit would we achieve? To me, when I saw that item, that answered the question for me.

I know people like to engage in numbers games and statistics, and everybody is looking for statistical arguments to back up their argument or their claims, your positions. Presumably, if the Ministry of Labour actually went back to providing us with information on a regular basis, we might be able to do that, but they don't really do that much any more. So it's hard to get hold of those kinds of figures.

Apart from the numbers, for me it's really more about putting an end to needless death and injury. Certainly, in this case it appears as though the message hasn't quite got through yet. For my part, anything that will contribute to getting that message across is worth doing. If increasing the fines has the effect of motivating even one business owner like Rob Ellis to think twice about conditions in his workplace, then to me it's worthwhile.

On my last page I make some comment about what I think would be an improvement to section 32, and that's in relation to the section on directors. While I agree that it's important to hold directors accountable for conditions in the workplaces of the companies they are employed by, we already do have section 32 in the act, which requires directors to take reasonable care to make sure the corporation complies with the act. Unfortunately, the Ministry of Labour has never actually, to my knowledge, laid a prosecution under that section, except in cases where there were situations of authorization, permission or acquiescence. So the section in Bill 34 codifies the status quo and perhaps discourages the possibility that the act will be used in a more flexible and effective way to make directors, again, as I said before, think twice about what's going on in their workplace. In my view, if you can only be prosecuted for permitting, authorizing or acquiescing, then in a sense you're creating a disincentive for directors to become proactive. If they do become proactive, then there is a chance that they can be prosecuted. If you leave it as section 32, then it encourages proactivity. That's just a suggestion.

That's the extent of my prepared remarks. I'm available for any questions in whatever time is left.

1620

**The Chair:** Thank you. We've got a couple minutes per caucus. We'll start this round with Mr Kormos.

**Mr Kormos:** Thank you very much, folks. Robyn Lafleur was a young woman down from where I come from, crushed by a burning beam at the Esquire factory in Port Robinson. The plant, the corporate entity and several individuals were charged with page after page of information bringing charges under the Explosives Act—federal charges—and the Occupational Health and Safety Act. In the House a couple of weeks ago, I asked a question, because the prosecutors, provincial and federal, were cutting a deal, where all the charges against the individuals were going to be pulled, in exchange for a plea of guilty by the company. But, you see, the company is American that has no real presence in Canada. All the fines in the world will mean squat in that regard.

What's your experience? We're going to be discussing this whole business of fines and how we get at some of these fines, some of these notoriously low fines. I've got some ideas about how we get there. It isn't just the judges and the JPs. What's going on? Why would the Ministry of Labour be wanting to pull charges, to cut a deal? The family says, "We don't care if they're acquitted on some technicality. Let us have our day in court." Do you guys know what's going on? The Attorney General doesn't seem to.

**Mr Ublansky:** I can't say that I have any particular wisdom on that. Certainly it has been our experience over the years that quite frequently the cases that attempt to draw higher fines tend to be cases where there's no one there actually to get the money from or to extract the money from. The ministry will release the information about a heavy fine having been issued, but the reality is that the fine is never collected.

**Mr Kormos:** The company is bankrupt or delisted or whatever it is.

**Mr Ublansky:** Yes. I guess one does have to question the wisdom of why those are the cases that are being pursued, as opposed to perhaps some of the others. Let's put it this way: there's no shortage of opportunity to find candidates for prosecution, candidates who are here and who will be here and who aren't going anywhere.

**Mr Kormos:** My counterparts here, I anticipate, will be voting for the government's Bill 57, which eliminates the requirement that there be compulsory as-of-right workplace inspections by Ministry of Labour inspectors when there's a refusal to work unsafe work. Notwithstanding that the workplace inspectors have been reduced from 278 down to a mere 200 and those 78 haven't been replaced, what's your view of legislation that would eliminate the as-of-right obligation, requirement, that an inspector go to a site?

**Mr Ublansky:** I'm very fearful. Again, speaking on behalf of the workers that we see, in a non-union environment, the thought that an inspector would somehow deal with a work refusal situation without actually being there boggles my mind. It's unthinkable. It's unthinkable to even contemplate that possibility that this one, lone, non-union worker is going to take on the strength and the power of his employer and have virtually nobody there for support. As I mentioned in my prepared remarks, that's already the case in that situation to begin with. Then to say that you can't even draw upon the resources of the Ministry of Labour for some help and some support is just unthinkable.

**Ms Mushinski:** I really have just one question, and it's with respect to your comments about section 32. I believe you indicated, Mr Ublansky, that to your knowledge there had not been any convictions or charges.

**Mr Ublansky:** As far as I know—there has never been any conviction for sure. I suppose if there had been a charge and an acquittal, I might not know that, because most of the publicity surrounds convictions. But as far as I know, there has never been a charge under section 32 in relation to failure to ensure compliance with the act. Whatever charges there have been, have been connected to a hands-on involvement by the director.

What I'm concerned about is taking the directors off the hook. I think if you're a director of the company, you ought to have a proactive attitude about what's happening in the workplace in that corporation and you ought to make it your business to be sure that health and safety rules are being complied with in that workplace; and if you don't do that, then you should be held accountable. That's my point.

**Ms Mushinski:** The reason I asked the question was because it's my understanding that 174 charges have been laid and there have been 19 convictions since 1995.

**Mr Ublansky:** Under section 32?

**Ms Mushinski:** Under section 32.

**Mr Ublansky:** Again, I could be wrong, but my guess is that if you were to look at those 19 convictions, you would find that in every case the director was physically on-site and was physically implicated in the offence or the violation that occurred. There has never been a case where a director was charged and convicted simply because he didn't take a proactive attitude and make sure that things were being done correctly. That's what I think needs to be encouraged.

**Mr Agostino:** First of all, thank you for the presentation today. The concern we have talked about was just addressed now. I guess we left it as it was in the bill was on the advice of legal counsel, who felt that it would be more likely to get more prosecutions. I understand the other one is more open-ended, but legal counsel's advice was that it would be much more difficult to get a conviction under that section than under the—and if we could combine both, it would have been ideal. So that sort of addresses part of that.

I want to go back to the point of the fines again. This bill primarily deals with increasing fines and increasing penalties and jail terms. That's only one part of the puzzle, obviously; there's going to be a lot more to it that has to be done with education and training and so on.

**Mr Ublansky:** Absolutely.

**Mr Agostino:** From your point of view, how important is the fact that the fines are heavier and the jail terms are longer as a deterrent to make sure that employers ensure that they provide a safe workplace and a safe working environment for women and men who are employed with them?

1630

**Mr Ublansky:** I can only fall back on the remarks of Rob Ellis, because I've never operated a business; he has. He just told us 10 minutes ago that he was directly motivated and affected by the penalties that are associated with the Environmental Protection Act.

I think that's true. I've had others tell me that. I believe that to be the case, particularly in the situations that we come up against. Most of the situations that we deal with are employers like Rob Ellis. They're small, and there is a personal liability attached to that. It is not a distant relationship. They can be influenced by, what I was saying before, the real chance that they could be dragged into court, they could be charged, they could be convicted and they could end up in jail. That has a real impact on small employers. Again, I've been doing this for 25 years. People have been searching for all that period for the solution to, how do we motivate small employers? With all due respect, I think that's the best way. It may not be the way we would like, but it works.

**The Chair:** Thank you very much, Mr Ublansky, and your colleagues, for coming before us here today.

With that, we will move into clause-by-clause consideration of Bill 34.

**Mr Agostino:** Can I have just a couple of minutes to explain the intent to the committee, what the bill does, and then we can go into that. We have one amendment, as well, that we'd like to present.

**The Chair:** Feel free.

**Mr Kormos:** Further to that, I'm wondering if Mr Agostino could address, unless that is his intention, the comments made about what is director liability.

**Mr Agostino:** First of all, I want to thank the committee for taking the time and interest here today. It is, for me, a very significant piece of legislation from the point of view of what we need to do. We heard some examples today of some of the impact that workplace injuries and deaths have had on people's lives. I think we all have friends, family, relatives or neighbours who we can relate to from those types of experiences and tragedies that have occurred in the workplace. Regardless of arguments about the statistics, the numbers and the fines, whether convictions have gone up or down or whether the number of deaths has gone up or down and so on, I think we all would agree that if this type of legislation prevents one death in the workplace, then it is well worth bringing into force here.

I think it affects particularly young people. It is a tragedy when anyone dies on the job, when anyone gets injured on the job, but when you're talking about 17-, 18-, 19- and 20-year-olds, at a time when they're just starting their lives, it hits all of us a lot harder.

There was another incident in Cambridge three days ago. We don't know—the investigation is just underway. A 19-year-old young man was killed; he got pinned between a forklift and a truck. These examples we see every single day. Often it is a question of neglect. Often they happen because there is neglect.

When my own father was injured on the job and ended up in a wheelchair, it was simply as a result of neglect, because it was a small employer, non-unionized. All it would have taken was \$2 or \$3 to put up a little wooden railing around an elevator shaft and that accident would not have occurred. There was never a charge laid. There was never an investigation into that. My father and my family, as did thousands of other Ontario families, suffered the consequences of that. He spent the last 23 years of his life in a wheelchair. His death to some degree was contributed to by his accident and implications from the accident as well. Clearly, there's one other small example of the types of things that have happened in Ontario.

I really believe that this will go a long way to help. It has got to be part of a bigger package. We've got to be more aggressive in enforcement. We've got to be more aggressive. Prosecutors have to be more aggressive in seeking bigger fines and longer jail sentences in these types of things. Again, if you look at it—and Mr Ellis gave a good example—as important as environmental protection is, and we all agree and we all support that type of legislation, there's something out of whack here where fines and penalties for environmental accidents are greater than fines and penalties for accidents that occur to



people, or at least on a par. There's something fundamentally wrong. Not, of course, that one is less important to do, but when you look at it in human tragedy, in human loss, one has to draw a conclusion that it is at least equally important from the point of view of legislation.

I would hope that we support this today with one amendment simply to change the name of the bill. To some degree, I think that would pay respect to Dave Ellis and a tribute to the work that his father has done in this.

Just to quickly address the issue Mr Kormos and I talked about earlier, we had the discussion with Dan and other folks regarding that part of the bill. It was the advice of legal counsel that it was more enforceable and possibly easier to get a conviction if the charge came in the more specific rather than the open-ended section 32 that is now there. That's why it was done that way. We did check with legal counsel early this afternoon again to try to see if they would give us what they felt was better on that. Their advice was that it would be more likely to get a charge and a conviction when it's as it is in the bill rather than as it was in section 32.

**Mr Kormos:** If I could just respond to that, I would have this question, because I recognize the distinction of this amendment to the original section or the section that it—reasonable care to ensure compliance. Why would the two sections not be included? In other words, why would you delete the other section? My submission is that the presenters are correct when they say that one is more encompassing but they can address two very different things. I ask you, Mr Agostino, would you then consider an amendment that would merely add this as a section? That way there'd be choice on the part of an investigator prosecutor.

**Mr Agostino:** I'm comfortable with that. I would simply add that to remove the one and add the other one would give some flexibility.

**Mr Kormos:** I wonder if legislative counsel could—I don't believe there'd be any nullification one of the other if they were merely added. The Criminal Code has many sections which are very similar and come close to overlapping, but that doesn't prevent them from coexisting. You may be in trouble if you charge both, right?

**The Chair:** Perhaps we can get legislative counsel's opinion on that matter, Mr Kormos.

**Ms Cornelia Schuh:** I didn't quite follow what provisions you were talking about keeping rather than replacing. Can you explain it for the slow-witted.

**Mr Miller:** I believe it is section 32.

**Ms Schuh:** Which isn't being touched in the bill.

**Mr Kormos:** There's no repeal of any of the existing act, correct?

**Ms Schuh:** No.

**Mr Kormos:** There's no repeal of any of the offence sections?

**Ms Schuh:** No, this doesn't affect section 32 or any other substantive section that would create an obligation.

**Mr Kormos:** OK. So this amendment does have two offences coexisting in the same statute?

**Ms Schuh:** Yes.

**Mr Kormos:** Problem solved, right? No issue. My apologies. Good. I feel much better now.

**The Chair:** It's always a goal of mine, Mr Kormos, for you to feel better.

**Mr Kormos:** I'm sure it is.

**The Chair:** Are there any other comments, Mr Miller?

**Mr Miller:** Just on the same point, Mr Ublansky felt that somehow this was going to penalize companies that were proactive toward trying to have a better occupational health and safety record. I'm just wondering about clarification on that point.

**Mr Agostino:** That section stays as it is. This is an amendment to that. It would not affect what's in there already, which is what legal counsel has advised us.

**The Chair:** If there are no other general comments, perhaps I can move into section 1. Your comments of course are always still in order as we move through there. I'll ask, are there any comments or amendments to section 1 of the act?

**Mr Kormos:** I support section 1. Very quickly, the issue of maximum fines is very relevant, firstly, from the fact that, as I understand the principles applied in sentencing, people never get the maximum fine. Break and enter into a dwelling, for instance, under the Criminal Code has a life imprisonment penalty. It is one of the most serious offences in the Criminal Code. But I defy anybody to point out somebody charged or convicted of break and enter who's gotten a life sentence, because, as I understand it, the principle that the courts apply is that of the worst offence by the worst offender, and in the case of break and enter into a dwelling, there may well be some judicial regard for the fact that at the end of the day maybe life in prison is just excessive in view of the fact that you get life in prison, in theory, for murdering somebody.

#### 1640

It seems to me that it's important to raise these fines, because then you raise the bar across the board. You give JPs or judges more leeway to give heavier fines, because they're not bound by the lower range of that maximum fine. That's number one.

Number two, we've heard some reference, and this isn't germane at this point to the bill, but it is certainly germane to what Mr Agostino purports to address: I've had great concern about provincial prosecutors who prosecute these things, either for the Ministry of Labour or provincial prosecutors in local provincial prosecutors' offices, or special prosecutors from any number of ministries, depending upon where it's coming from, with the type of workloads that they have—which results in what appears sometimes to many of us their eagerness to plea bargain—and the fact that there is no Victims' Bill of Rights in terms of there not being an effective one, and there isn't. The courts have said that vis-à-vis let's say criminal offences. There's certainly none with respect to provincial offences.

I suspect that if these folks were back up here at the table rather than just sitting in the audience, they could

tell us time and time again about how frustrating it is for families of victims, for victims themselves, to have some active participation in the prosecution, in terms of being consulted, even. It's incredibly painful.

I've talked to the House about the Robyn Lafleur case, which has yet to come up in court again. I talked about the Jeffrey Fleeton case out of Burlington, a 17-year-old boy who was struck dead while he was doing his summer job for his dad, who owns a surveying firm. He had the orange vest on. The Highway Traffic Act charge against the trucking company was going to be withdrawn. Again, that family continues to call me after I raised that matter in the Legislature in question period, saying, "We're still not getting any contact with the prosecutor. We aren't being told whether the deal's going to be cut, whether they're going to prosecute. Never mind being consulted and asked our opinion; we're not being told."

I have to caution them and I say, "Look, sometimes prosecutors make deals because they're afraid they won't get a conviction otherwise. You know, the evidence may not be as strong as it should be." And to the final one, these victims and their families say, "Look, if at the end of the day a judge or a justice of the peace says 'Not guilty,' God bless, but don't just pull the charge." Do you know what I'm saying? "If in fact the law is such, or the evidence is such that a judge or a JP has to find accused A, B or C not guilty, fine, so be it. But, we want our day in court. We want our loved one's day in court," in the case of a deceased person, "We want to be able to tell our story. We want to hear from accused A, B, C, we want to hear what they've got to say about the case, too, what they've got to say in defence of themselves."

That's one of the real problems here, that admittedly this bill is not going to address. Raising the fine is a very positive thing, because it gives sentencing JPs and judges more leeway.

I also want to say this: I've been looking very carefully at the recent announcements of appointments of justices of the peace. While there had been, during a period of time, some real depoliticization of that process, I find more and more familiar names, some of them friends of mine, quite frankly, among people being appointed as justices of the peace. That's not to say that patronage with merit is in and of itself a bad thing. As I say, some the personalities who have been appointed, because it's JPs hearing most of this stuff—

*Interjection.*

**Mr Kormos:** Yes, provincial offences, provincial offences courts. Yes, Mr Miller, justices of the peace. In some cases they'll refer the matter over to the presiding provincial court judge, and this is where you get some big differences, too. A provincial court judge who does criminal work day in and day out has a far better handle on what appropriate sentences should be, let's say in the case of a death, because here is a judge who has in his or her experience given people five years, 10 years, 15 years. So the prospect of giving somebody an 18-month sentence doesn't rattle them to the core, you know, where they're shaking because they've never sentenced. It's

tough for a judge. It is tough for judges, I think, to send people to jail in almost every instance, but they aren't rattled to the core and saying, "Oh my goodness, I've never taken away somebody's liberty for six months before."

But most of the cases are handled by JPs. Some of them are very, very good. Some of them don't have the experience that they should have. Some don't have the resources, the training, the backup, the familiarity, quite frankly.

Patronage with competition and merit I think we all live with; that's the name of the game. But patronage without merit becomes dangerous, because one of the problems that may occur from time to time is that people who are called upon to deal with these types of cases cannot, notwithstanding their best efforts, turn themselves into real neutrals. If they maintain some ideological bias toward let's say companies or corporate operators to say, "Well, Jeez, you know, we can't inhibit the company from making profits; we don't want to go too far," if that bias remains, it will be unspoken. No judge or JP should have that bias, and if a judge or a JP does have a bias, he ain't going to talk about it. Nobody said they were stupid, right? They don't have that on their foreheads. It's just that inclination or that bent, and that's a real problem. I'm going to wrap up very shortly, Chair.

I'm also worried about the climate in which we protest these low penalties. We've got Bill 57 in the Legislature, time allocation being debated now. This is a Red Tape Commission bill. The Red Tape Commission has made recommendations, as we're told, that deal with a whole number of regulations and standards, and now increasingly standards that apply to workers in their workplaces that are considered red tape; these are nuisances. That's why Mr Ellis was brilliant to come here as a business person, as an employer, knowing full well of what he speaks.

As long as we regard these regulations and onerous standards—and they should be onerous—as mere red tape to be cut, mere red tape to sic Mr Sheehan on to, we're creating a milieu, a climate, wherein sentencing judges and justices of the peace are getting a green light to say, "Well, you know, a young man died in the dough mixer, as in the case of young Mr Ellis, and then another one eight months later. We can't make it so tough on business that they can't operate, where everybody loses, some risk in the workplace."

I don't believe in workplace accidents. I don't believe there's such a thing as a workplace accident. I got some of your folks really irate in the Legislature the other day when I talked about how I know the guys, the old men—you go to the mall, to Tim Hortons—I know which ones worked in the foundry, because they're the ones with the fingers missing and the other ones wearing the hearing aids at 55, not 65. I can tell which ones worked in Union Carbide, because they're the ones who are constantly coughing and spitting into their handkerchiefs between sips of coffee, they are. You can go to a concentration of

them—Hamilton is the same way—you can almost go there and pick the old women and men and know where every one of them worked. You know, that one worked with Dofasco. You can do that. There are no workplace accidents. I don't believe that.

I'm torn between contrary advice, one the mere addition of the offence of directors or officers and its co-existence with the other section. I appreciate the arguments being made that that will make the other section, the more onerous and difficult-to-prove section, ill-used then. That's a matter of ensuring that there are resources and commitment. Having said that, Chair, people are understanding quite clearly.

Mr Ellis expressed concern. He didn't express concern about the environmentalists having done a good job; he expressed a concern that maybe labour hadn't done quite as good a job as the environmentalists. I didn't have a chance to because of the time, and I regret that he's not here, but I disagree with him. It's not for want of trying, it's not for lack of trying, because it seems to me that environmental issues perhaps don't have the right-wing/left-wing boundary that labour issues do.

I dare say Sid Ryan and paramedics and CUPE workers and OPSEU workers and the auto workers and steelworkers and a whole lot of others may have to shut down workplaces. They've guaranteed—the health and safety and the right to refuse unsafe work—there will be wildcats. There won't be announcements; there won't be ads in the paper weeks in advance. I've been proud to be with a couple of groups of wildcat workers with great courage, who simply say, "Shut her down, guys," and down she goes. That's going to be their response to Bill 57, because these people are fighting for their lives. They're fighting for their sisters' and brothers' lives. They are, literally; they're fighting for their lives.

1650

I was accused of using silly statistics. The Minister of Labour accused me of using silly statistics today in the Legislature when I talked about how in 1999 workplace deaths had risen to 200 and by the year 2000 they had risen to 243 women and men here in the province. The Minister of Labour said, "Oh, Kormos is just using silly statistics." Two hundred deaths and then 243 deaths of women and men working in their workplaces—silly? Mere statistics? Not by a long shot.

**The Chair:** Any other comments or amendments to section 1?

**Mr Garfield Dunlop (Simcoe North):** Just a question to Mr Agostino. I didn't bring your private member's bill with me today, but I was curious about some of the research you may know about—or maybe you haven't done this research. In other jurisdictions where they have raised the fines—and I'm not sure if they actually have raised the fines in other jurisdictions, in US states—have the courts followed accordingly, do you know? Because I know that we haven't reached the maximum fines here and it has been clearly mentioned here today.

**Mr Agostino:** From what I have seen, there's not a lot of information available on that correlation. I think we've

seen in other areas—or here, for example—if the maximum is a year on something and they're giving 20 days and they use that as a parameter, you would think the logic would follow that if the maximum is two years, the least the judge would do is double that. Again, I don't have the statistical evidence to suggest that.

I see it really as a deterrent. We hope this leads in many ways to fewer convictions and fewer charges because there are fewer accidents. That's ultimately what we'd like to see as the result of all this. We would take no great pride in saying, "Gee whiz, we've convicted 100 more people and we've got 100 accidents in Ontario." That's not what this is about. This is not about more convictions, but about preventing accidents.

I would think if you follow the logic in many other aspects of law where the fines tend to become more of a deterrent, hopefully judges, and I think a lot of them will have to, with the aggressiveness of the prosecutors, will see how serious—it's like drinking and driving. That's a perfect example. You saw a pattern a few years ago where the kinds of sentences they were giving were nowhere as severe as they are today. We would argue among ourselves that it is not severe enough. But finally judges, prosecutors and the public are starting to see that killing someone with your car because you're drunk maybe should be treated no differently than pulling out a handgun and shooting someone. That kind of attitude is starting a change to get us there. I hope the same thing will happen here.

**The Chair:** Any further comments? Seeing none, I'll put the question.

All those in favour of section 1? Opposed? Section 1 is carried.

Section 2: Any comments or amendments?

**Mr Agostino:** Just a point on that, in correlation to that: the largest fine ever issued in Ontario to a corporation was done recently, about a year or a year and a half ago, as a result of the deaths of two men who had gone inside a tank to clean it at Dofasco. Dofasco and the subcontractor were both fined a total of \$500,000. That's based on the curve, which is half of what the maximum would have been, or if you do it individually, the maximum could have been \$1 million on the current fine. So that gives you an example, again, of a correlation between the sentence they're giving and the actual maximum due under law.

**The Chair:** Further comments on section 2? Seeing none, I'll put the question.

All those in favour of section 2? Opposed. Section 2 is carried.

Section 3: Any comments or amendments?

**Mr Dave Levac (Brant):** I have a motion on section 3.

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

"Short title

"3. The short title of this act is the Dave Ellis Memorial Occupational Health and Safety Amendment Act, 2001."

**The Chair:** Any comments?

**Mr Levac:** I have a short comment. I did check with Mr Ellis, and he appreciated the gesture and thought it was a noble thing for us to do. Mr Ellis has shared with us his story. Tragic as it is, Mr Ellis has moved forward and made presentations to small business, large business, corporations and schools. So he's taken this on as a task that he felt personally responsible for. Not only will this give memory to David, it will also encourage and support Mr Ellis's tasks ahead of him, because he told me that he continues to fight today and will continue to fight tomorrow. So I think it would be an appropriate gesture on our part, as a committee and hopefully as a Legislature, to pass this amendment.

**Mr Agostino:** Just to add to that, I think we've established a bit of a pattern here, when we use it. When we change legislation as a result of what we see, we use the names of the bills to pay tribute to those individuals who have sacrificed so much—in this case, Mr Dave Ellis and his life—as a result of the workplace. This would be a great opportunity to honour that and to pay tribute to the work that his father has continued to do.

He's also done a great deal of work with the ministry. He's done some work with the Ministry of Labour on the public relations education campaign with WSIB. A great part of his message goes to business, which is really important, to come from the spectrum of small business. Tomorrow he's speaking to the Rotary Club in Hamilton at lunch, as an example. So those are the kinds of ongoing activities. This bill will help us to remind Mr Ellis that we all remember his son and that we do, in one small token way here, pay tribute to the work he has done and to the sacrifice of his son.

**Ms Mushinski:** I don't have any specific difficulty with words like "Dave Ellis Memorial" being used. Perhaps the only concern I have—and it's perhaps more amusing than anything—is that it may not be seen as an actual amendment to the Occupational Health and Safety Act. I'm just—

**Mr Kormos:** Call the question.

**Ms Mushinski:** OK.

**Mr Ted Chudleigh (Halton):** My only comment would be that I'm not all that aware of all the various times when people have been killed or died in the way of industrial accidents. I understand from the statistics given to us that it's quite substantial. Along with everyone else, I would be more than happy to do whatever we could to try and limit those accidents. But I'm not aware whether the Dave Ellis situation, as grievous as it is, is indeed the most grievous. Is it the best known in Ontario? If we call this the "Dave Ellis Memorial," what does it do to all the other people in Ontario who have lost sons and daughters and husbands and wives and grandfathers? Does it lessen their sacrifice? Does it lessen their problem? I don't know about that. I just wonder, is this particular case an extremely well known one in Ontario or are there others that are equally well known?

**Ms Mushinski:** Is it as well known as Peter Kormos?

**The Chair:** Mr Levac, yours to respond.

**Interjection:** We may as well have this discussion right now.

**Mr Levac:** I would suggest that the gesture is based on my respect for the bills that have been put before us in the House previously: Sergeant Rick McDonald, Christopher's Law etc. This is one small token to a person who has dedicated their life to improve the circumstances for workers across the province. Obviously—and I would say that strongly—this would never be interpreted as a slight to anyone else who has lost a child or a young one.

**Mr Chudleigh:** Would it be seen that way across Ontario, in your opinion?

**Mr Levac:** In my opinion, no.

**Mr Chudleigh:** Good. OK.

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? The amendment is carried.

Shall section 3, as amended, carry? Section 3, as amended, is carried.

Shall the title of the bill carry?

**1700**

**Mr Kormos:** Once again, I indicate our support for the bill and our gratitude for the people who came forward to address it and so many others who have sought this amendment.

The last little round of conversation was interesting. That's probably very much the point. One of the things I've noticed is that prosecutors from the Ministry of Labour, when prosecuting these, have relatively few tools and resources at their disposal.

Very quickly, there have been massive changes in the attitudes of the courts about domestic violence, for instance. That was initiated by women's groups, advocacy groups for women, just as now, workers' advocates, be it injured workers' groups, legal clinic advocates for injured workers or the injured workers and their leadership that we all know so well—at least some of us—from being out there with them when they demonstrate here at Queen's Park regularly.

In the case of violence against women, it came with the Attorney General telling crown attorneys that they're going to get special training in prosecuting domestic violence; that they're going to have more tools available to them, in other words, they're going to get data that is sufficient and adequate in its nature that it constitutes evidence a judge can consider upon sentencing, things like the frequency of the matter—and this is admissible evidence on sentencing; that they're going to be having more staff and resources to work closer with the victims, so you have victim impact statements. Then judges began to get educated. A whole lot of good judges simply didn't have any familiarity with all the dynamics of domestic violence, or JPs in terms of bail hearings. I refer you to the recent series of articles in the Toronto Star about Ms Hadley.

What's important is that the Ministry of Labour and the Ministry of the Attorney General get serious about law and order; that in the case of workplace health and safety, this legislature not weaken the existing law—that's what's happening with Bill 57, the law is being

weakened; that the Minister of Labour and the Attorney General—and again I made cursory note of the business plan and didn't see this highlighted anywhere today—ensure that there are resources available so that the Ministry of Labour prosecutors, as well as investigators, have the resources they need to fully investigate a case, to fully prosecute it; that they have the resources to ensure that victims are intimately involved in decision-making during the course of the prosecution; that they've got the witnesses and the evidence to call after conviction so that higher and higher sentences can be sought; and there has got to be zero tolerance in plea bargaining.

That's what happened, among other things, in domestic violence against women. That was a good thing, because I'll tell you what was happening—and you know what was happening: women were getting the daylight's beat of them but, because of their economic situation, they ended up moving back in with whatever their counterpart was, spouse or what have you, and then going to court and telling crown attorneys, "Oh no, I don't want to prosecute the charge any more." These women weren't doing this of their own volition; it became a matter of necessity. It wasn't until you had centres where women could go, shelters, that women could be free of the influence, and you had crown attorneys saying, "No, our instructions are that we prosecute. If there's evidence, we prosecute," other than in the rarest and most extreme circumstances, even when the victim doesn't want to prosecute any more. They understand the peculiar dynamics around violence against women.

I haven't heard from the minister, or the Attorney General, a position of zero tolerance in plea bargaining; that we're going to do full investigations, that we're going to lay every charge conceivable, I don't care how minor. I mean, if there's a piece of litter that's on a piece of concrete in that plant where a workplace injury occurred, you will charge them with the whole works. Don't, as is usually done in shotgunning charges, lay a whole whack so that defence council can agree to plea to a couple. My friends over here know what I mean. They've always worked on this side of the legal fence but they know the procedure. Have an attitude of zero tolerance and have prosecutors demand—educate judges and justices of the peace in the course of it. It can be done.

Unfortunately, I don't believe it is being done. My experience with these cases—and my experience tends to be from the victim's side, as I suggest it probably is with more than a couple of others here—is that that isn't the way these prosecutions are happening. The public support for that is genuine; the workers' support for it is profound. It's simply, in my view, just a matter of political will and telling that damned Red Tape Commission to mind its own business and let workers' rights prevail.

**Mr Agostino:** Very quickly, since we're going to wrap up on this, I just want to thank the committee for the support on the bill and certainly I would hope that—

*Interjection.*

**Mr Kormos:** I spoke for five minutes.

**Mr Agostino:** —we will carry it through to the next step. I'll bring it up for final reading. I know that often a lot of private members' bills don't get to that final stage, but I urge and beg this committee, if you don't see fit to put this bill through—

**Ms Mushinski:** Mr Chairman, that is a quorum call. I am on House duty—

**Mr Agostino:** It's over now.

**The Chair:** Ms Mushinski, it's already over. Thank you.

**Mr Agostino:** Just to wrap it up, I want to plead to the government members that this is really important, I believe. It's important to saving lives and injuries in Ontario. If you don't see fit, because it's an opposition bill, please feel free to bring in your own similar bill very quickly. I will support it, I won't take a credit for it, but let's please get it done. This is too important, I believe, to play partisan politics, and I appreciate the non-partisan nature of the committee today on this issue.

**The Chair:** I will pose the question again.

Shall the title of the bill carry? The title of the bill is carried.

Shall Bill 34, as amended, carry? Bill 34, as amended, is carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much. I will do that tomorrow. Congratulations, Mr Agostino.

With that, the committee stands adjourned.

*The committee adjourned at 1707.*





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