



ISSN 1710-9477

**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 29 November 2004

**Journal
des débats
(Hansard)**

Lundi 29 novembre 2004

**Standing committee on
social policy**

Employment Standards
Amendment Act (Hours of Work
and Other Matters), 2004

**Comité permanent de
la politique sociale**

Loi de 2004 modifiant la Loi
sur les normes d'emploi
(heures de travail et autres
questions)

Chair: Jeff Leal
Clerk: Anne Stokes

Président : Jeff Leal
Greffière : Anne Stokes

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation 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 du Journal des débats et d'interprétation
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

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 29 November 2004

Lundi 29 novembre 2004

The committee met at 1545 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Jeff Leal): I'd like to bring this meeting of the standing committee on social policy to order. I understand our 3:45 group is here.

Interjection.

Oh, sorry. Before we get to the 3:45 group, I'd like someone to move the report of the subcommittee, please.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Mr Chairman, I'd be delighted to do that. I understand it's the tradition to read the report.

The Chair: Yes, Mr McMeekin, if you could put it on the record for us.

Mr McMeekin: I'll do that, Mr Chairman.

Your subcommittee met on Tuesday, November 23, 2004, to consider the method of proceeding on Bill 63, An Act to amend the Employment Standards Act, 2000 with respect to hours of work and certain other matters, and on Bill 55, An Act to amend the Health Insurance Act, and recommends the following:

On Bill 63:

(1) That the committee meet for the purpose of public hearings on Bill 63 on November 29, 2004;

(2) That any interested parties who wish to appear before the committee in addition to those already scheduled for November 29, 2004, may attend the meeting on standby and an attempt would be made to accommodate them to speak only if a cancellation should occur;

(3) That amendments to Bill 63 should be received by the clerk of the committee by 5 pm on Monday, November 29, 2004—you may want to ask about that at some point, Mr Chair;

(4) That the committee meet for the purpose of clause-by-clause consideration of Bill 63 on Tuesday, November 30, 2004, in Toronto—presumably here at Queen's Park.

On Bill 55:

(5) That the committee meet for the purpose of considering Mr Gravelle's private member's Bill 55 on December 6, 2004;

(6) That the office of Mr Gravelle provide the clerk of the committee with a list of witnesses to appear before the committee;

(7) That the organizations and individuals be allotted 15 minutes in which to make their presentations;

(8) That the deadline for written submissions be 5:30 pm on December 6, 2004;

(9) That clause-by-clause consideration of the bill be undertaken at the conclusion of public hearings on Monday, December 6, 2004;

(10) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings on either bill.

I'll move that.

The Chair: Madam Clerk, could you just comment on item 3, the amendments to Bill 63, as referenced by Mr McMeekin?

The Clerk of the Committee (Ms Anne Stokes): The deadline, according to this, would be that amendments from the three parties should be in my office by 5 o'clock today and they will be distributed tomorrow morning.

The Chair: Comments or questions?

Mr Peter Kormos (Niagara Centre): I want to reinforce the understanding that that is a directive in terms of "should be," as compared to the phrase "must be," as I recall from the subcommittee meeting.

Can the clerk please let us know about the number of requests to participate in the committee and whether or not we've been able to accommodate those people?

The Clerk of the Committee: We've had 13 requests in total, and we have been able to accommodate all. Everybody was contacted and offered an opportunity to present today and were either unwilling or unavailable.

Mr Kormos: There were some communications received by the clerk, and she distributed them to members of the committee, from any number of people who expressed concern on their own behalf and on behalf of the organizations they represent or were members of about the committee not accommodating them because of them being outside of Toronto. Can you tell us how those people have been dealt with and with what degree of success?

The Clerk of the Committee: I explained that committees don't travel while the House is sitting and that we have facilities for videoconferencing or teleconferencing to accommodate those people who can't make it to Toronto.

Mr Kormos: How were they accommodated?

The Clerk of the Committee: How are they? An offer would be made, if they would be willing, that we

would set up a videoconference for them to make a presentation.

Mr Kormos: Yes, but this is what I want to know: Were any of those prospective participants who were being accommodated either by way of paying for their travel to Toronto or by way of videoconferencing—the offer made, and if offers were made, were they declined? Can you help us in that regard?

The Clerk of the Committee: One offer for videoconferencing was made and declined because of the time frame. There wasn't enough time for the person to prepare.

Mr Kormos: Thank you kindly.

The Chair: Mr Arnott, do you have any questions or comments on the subcommittee report?

Mr Ted Arnott (Waterloo-Wellington): Not at this time, Chairman, but thank you very much.

The Chair: All those in favour of the subcommittee report? Opposed? It's carried.

EMPLOYMENT STANDARDS
AMENDMENT ACT (HOURS OF WORK
AND OTHER MATTERS), 2004

LOI DE 2004 MODIFIANT LA LOI
SUR LES NORMES D'EMPLOI
(HEURES DE TRAVAIL ET AUTRES
QUESTIONS)

Consideration of Bill 63, An Act to amend the Employment Standards Act, 2000 with respect to hours of work and certain other matters / Projet de loi 63, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne les heures de travail et d'autres questions.

HUMAN RESOURCES PROFESSIONALS
ASSOCIATION OF ONTARIO

The Chair: I'd now ask the Human Resources Professionals Association of Ontario, Mr Boniferno, chair of the provincial affairs committee, to come forward. You'll have 15 minutes, and any part of the 15 minutes that you don't take advantage of, we'll have questions from the committee.

Mr Paul Boniferno: Thank you for the opportunity to present to the committee today.

Just quickly, for those of you who aren't aware of the Human Resources Professionals Association of Ontario, we have a membership of over 14,000 HR professionals across the province. I personally sit as the chair of the provincial government affairs committee of that association, which has approximately seven members. We regularly advise the government and provide input and consultation on a number of labour- and employment-related issues. I think I would be comfortable in saying that we have been a well-known key stakeholder for the Ministry of Labour for several years, through governments of all stripes, in providing what we think is a

balanced and neutral approach to labour relations and employment law in Ontario.

1550

Today, I wanted to address for you our position with respect to Bill 63 and to give you a bit of insight. We did provide input to the government, by way of a letter dated March 1, 2004, to Tracey Mill, of the hours-of-work project discussion paper. At that time we expressed to the government that the HRPAA, while we welcomed the opportunity to respond to the consultation process, was completely opposed to the initiative that was being proposed. Our concern was as follows: The discussion paper by the government at the time suggested that there was an old permit system that was viewed as being complex and cumbersome, and they did not want to return to that type of process. It is our position, after reviewing both the discussion paper and the legislation itself, that in fact that's precisely what the government has proposed to do.

With respect to the 60-hour workweek, if I can take you back a step, part of the difficulty I think the government finds itself in is that there is a bit of a misconception out there that there has been, at any point in the history of Ontario, a mandatory 60-hour workweek. Any HR professional will tell you that that in fact is not the case, that at all times, under any legislation, of any government of any stripe, any hours that were required above and beyond the 40-hour workweek could only be done in consultation with and through the consent of employees.

Now, we all recognize, and I think legitimately need to address, those scenarios where employers don't get the consent of the employees or force the consent of the employees or the employees feel compelled. Unfortunately, those are not the employers who are currently going and getting consent from the employees voluntarily. They are also not the employers who are ever likely to go and seek the direction or approval of the director of the employment standards branch. Essentially what this legislation does now is, it does not—and I repeat, does not—end the 60-hour workweek in Ontario; it still permits it. In fact, all it does is add one additional step to the old process of getting consent from the employee and getting approval of the director.

If you put yourself in the position of the compliant employer—and, granted, I suspect the over 14,000 members of our association are compliant employers—what you've asked those compliant employers to do is comply with yet another bureaucratic approach to get the approval of a director of the employment standards branch. In our view, it is not a good step forward in trying to address what we call the bad bosses in Ontario.

Currently, as the chair of the provincial government affairs committee, I sit on the minister's employment standards action group, along with, I believe, the next presenter and a couple of others you'll hear from. We have consistently been saying to that committee and to the government that what we need to focus on is the bad bosses. Don't create more bureaucratic rules and

regulations for those who are compliant. Provide them with the flexibility, as opposed to throwing on more requirements for those employers. Again, we believe this legislation does nothing other than that.

I would also like to point out in the legislation a piece that we actually are supportive of, and that is a requirement for the employers to provide information to the employees about their rights under the Employment Standards Act. I will commend the government for recently introducing further information for employees in, I think, 14 different languages, an excellent approach that we have been supportive of. But let me also point out—and I recognize that this is not the bill that's currently before this committee—it is completely contradictory with the government's initiative last week to take away information from employees with respect to their rights to decertify, for example. So we're seeing conflicting messages with respect to, on one hand, ensuring that employees are advised of their hours-of-work provisions, but, on the other hand, saying, "You're not entitled to information with respect to certification or decertification."

Again, we just urge the government that if you are sincere about increasing the amount of information employees are provided, we should look at it more globally and ensure that we're providing them with all of their rights under all of the various statutes. Those are my comments.

We had proposed in our letter to the minister and to the ministry staff an alternative approach. That alternative approach allowed for averaging of hours over a period of time—we suggested a six-week period of time—to ensure that, if those hours exceeded 60 hours in any given week during that period of time, a permit would be required, as opposed to the current system that the government has reintroduced, which really was the cumbersome, complex and complicated system of a permit system years ago that employers, employees and trade unions, quite frankly, found to be outdated.

The Chair: Thank you very much, sir. We have about 10 minutes left for some questions. We'll start with the government, then we'll go to the official opposition and then to the NDP.

Mr Kevin Daniel Flynn (Oakville): Thank you, Mr Boniferro. I wonder if you could expand a little bit on how you see this new system we're proposing as being cumbersome. My understanding is that currently you don't need any approval to work between 48 and 60 hours a week. No director's approval is necessary.

Mr Boniferro: Correct.

Mr Flynn: As a government, we decided that, in our opinion, that's not in the best interests of the workforce and we've said that between 48 and 60 hours, you do need approval. The way you would get that approval is to make an application on-line. I fail to see how that would be cumbersome. I could see you maybe not agreeing with the policy; I can understand that. But I don't see how you could term that process as being a cumbersome one.

Mr Boniferro: I would say to the member that if you put yourself in the position of an HR professional, while

it may seem very simple today to say, "All you have to do is apply on-line and you'll receive it," it's probably one of another 150 approvals that the HR professional is having to deal with on a regular basis. While it may seem like, "Just go ahead and ask the government and they'll say yes," I would also flip that around and say, "Why are we requiring that if it's going to be that simple, just sending an e-mail and getting permission?" We suspect that the reason you're asking the HR professional to submit a form and seek the approval of the director is because in some instances and under some criteria that's going to be denied. If it's not, then it truly is a bureaucratic step that wouldn't be required.

The other thing I'll say is this: It requires that that be done on a regular basis; I believe it's every three years. The issue for HR professionals—and I think trade unions and most employers will tell you the same thing—is that every time you have to revisit these issues and get approval again, it creates a problem and a hurdle in the workplace, where there is balance already struck, it's working, the employees have consented to it and the employer has consented to it. You have to take a step back, we believe, and ask, "Why does the government need to step in again and ensure that that agreement is still enforceable?"

The Chair: Anything else, Mr Flynn?

Mr Flynn: Just one supplementary. I don't think anybody has implied—certainly I'm not implying it and I don't think we have implied as a government—that you would automatically receive an answer of yes when you applied. What I was saying is that the means by which you apply appear to me to be fairly simple when compared to other applications and processes.

You were talking about the earlier way of doing it. I understand there was a blue permit, a green permit and a gold permit.

Mr Boniferro: That's correct.

Mr Flynn: That sounds to me like something that is cumbersome.

1600

Mr Boniferro: Quite frankly, the application process was quite similar. It wasn't very hard to get. In fact, I can tell you that many lawyers probably became relatively rich over it, because you simply had to write a letter to the director, set out the facts and your client would be granted a permit approval. The complexity of it was this: Employees had no idea what it meant; what is a blue permit versus a gold permit? In the whole system itself, what you ended up with were workplaces that had permits that had been posted in the early 1980s that nobody ever revisited and said, "What are these all about and why do we have them?" So the issue, really, was one of the government and the ministry approving, as opposed to an issue of the parties agreeing.

As HR professionals, we're encouraging you to look at a system where, instead of getting director approval, you get the workplace parties to arrive at an agreeable consensus and an agreeable solution that will work for years to come.

Mr Flynn: One final and very brief question, and that's on the targeted approach to enforcement. Is that something you agree with?

Mr Boniferro: I'm sorry?

Mr Flynn: The targeted approach to enforcement—going after the bad guys.

Mr Boniferro: Yes, absolutely. In fact, we've been encouraging both the previous government and this government that we should be looking at targeting sectors and particular employers that are known violators of the Employment Standards Act, and leave the flexibility and the good bosses in Ontario alone so they can continue to prosper and create jobs.

Mrs Elizabeth Witmer (Kitchener-Waterloo): The minister is fond of saying that we need to go back to this system, because this is how we did it under Premier Bill Davis. I guess I would say to you, what is the difference between this system and the system under Bill Davis? At the same time—and I know you've referred to this already—why is it so important to continue to make changes to legislation?

Mr Boniferro: Let me start with your second question. I think the importance of making changes to legislation is to keep the legislation up to date with the modern workplace. Where the legislation and the process in the days of Premier Davis may have worked in the workplaces of the days of Mr Davis, I don't think we have to go very far—we could probably stay right inside the confines of these four walls—to show you that in fact the workplaces of today are very, very different than those of the days of Premier Davis. So we think it's important that, as HR professionals, we continuously suggest improvements to legislation which would allow employers and employees the flexibility to meet the challenges of the modern-day workplace. We think the system of permits and requiring government approval for hours of work are far outdated.

One final comment on your question that I would make is that the hours of work have changed. Where 44 hours and 48 hours before overtime were commonplace back in the days of Premier Davis, I think many of you will openly admit that you work many hours beyond that and that most of us work hours in our workplaces that are in excess of that. What we need to do is ensure that we have a system that allows flexibility on the one hand, while on the other hand protects those employees who may be subject to the bad bosses that I referred to. Quite frankly, in some of those instances, when we talk about bad bosses, we're talking about employers who are unaware. In many instances, you have a new business that has no idea the Employment Standards Act even exists. Those businesses should be the focus of your legislation.

Mrs Witmer: So if you take a look at the legislation before us and you take a look at what you're recommending, is there a need to totally repeal what's being proposed and introduce a new bill, or is this bill at all salvageable?

Mr Boniferro: There are portions of the bill that we would be supportive of. For example, we're very sup-

portive of the provisions that require employers to provide information to employees. Mr Flynn has identified the targeted audits and prosecutions that we are supportive of.

With respect to the hours of work, it's our proposal that those provisions be repealed and that there be amendments made that would provide for averaging of hours over a period of time. We've suggested a six-week period of time, and only in cases where those hours of work go in excess of 60 hours would approval of the director be required.

Mrs Witmer: At the end of the day, if those changes were made, then it would have the support of your group, Mr Boniferro?

Mr Boniferro: That's correct. We indicated to the ministry group prior to the introduction of the legislation, in our response to the discussion paper, that we would not be supportive of the legislation if it required director approval for hours beyond 48 to 60 but we would be supportive if it consisted of an averaging arrangement over a six-week period of time.

Mrs Witmer: Has your group had any conversations at all with employees who would be impacted by this legislation?

Mr Boniferro: In preparing our proposal for March 1, we had sent the discussion paper and our response out to all of our chapter liaisons, and I can tell you that that turns over into an e-mail process that gets out to all 14,000 of our members. We did have some response, and I can say that our paper is very strongly supported by those 14,000 HR professionals across the province.

The Chair: Mr Kormos, a quick question.

Mr Kormos: A short question in the context of what would be the fair portion of the time. Mr Boniferro, I want to understand—

Interjection.

Mr Kormos: Don't use up my time, then, Chair.

I want to understand this very clearly. You speak for HR people, I trust. Would you call yourself a spokesperson for the broader business-employer community?

Mr Boniferro: No. In fact, we at the HR Professionals Association of Ontario have taken pride over the years in being considered, at least from the ministry's perspective, as somewhat of a neutral stakeholder. We don't purport to be on the employees' side and we don't purport to be on the employers' side; we're on the HR professionals' side.

Mr Kormos: Neutral, impartial, and you're not enthusiastic about the bill as it stands now. Am I correct in inferring that from your comments?

Mr Boniferro: We, as an association, are very enthusiastic about the bill in the sense that as HR professionals we believe it's the wrong direction.

Mr Kormos: Ah. So you don't want to see this bill passed in the form it is?

Mr Boniferro: No, and I think we've made that clear, both today and in our letter to the government on March 1.

Mr Kormos: Because I'm going to be keeping track of the presenters. OK, so the Human Resources Professionals Association of Ontario does not want the bill to pass. Thank you, Mr Boniferro.

The Chair: Thank you for your presentation today.

EMPLOYMENT STANDARDS WORKING GROUP

The Chair: Next, I would like Mary Gellatly from the Employment Standards Working Group to come forward. Welcome to our committee this afternoon. You'll have 15 minutes, and any of that time that is not utilized we'll have for questions.

Ms Mary Gellatly: Thank you very much. The Employment Standards Working Group is a coalition of 30 community legal clinics and organizations that work with non-unionized workers in low-wage and precarious work. We work with over 25,000 workers in Toronto every year. We welcome the opportunity to address the standing committee on Bill 63 and the proposed changes to work and overtime.

In preparing for this conversation today, we asked people with whom we work about Bill 63, and the response was pretty much uniform that there really will be no change for low-wage and precarious non-unionized workers if this bill proceeds as it stands.

Take the example of Woody, who is somebody we work with, and over 300 co-workers in a cosmetics factory. For years they were working 50- and 60-hour workweeks continuously. They didn't get premium pay over 44 hours a week. They certainly were never asked to sign an agreement to work overtime. They were routinely penalized and fired if they refused to work over 48 hours a week. Occasionally, workers would be fired without just cause and they would find their way to the Ministry of Labour. On none of those occasions did the Ministry of Labour investigate what was happening in that workplace: investigate the lack of an agreement, investigate the reprisals, investigate the fact that people were working for \$7.50 without getting overtime premium pay. The employer was allowed to continue breaking the law, year after year, for hundreds of workers. If Bill 63 is passed without significant fundamental redrafting, the situation is going to continue the same for Woody and his co-workers.

1610

I want to spend just a little bit of time talking about some of the key problems that we see with Bill 63 for non-unionized, low-wage workers, and then make some recommendations for change that we think could help Ontario workers.

Minister Bentley tells us that the aim of the bill is to protect workers, particularly vulnerable workers, from being forced into long hours of work. He proposes to do this in basically two ways: to continue, on one hand, with the employer-employee agreements; and secondly, to bring in the approval process to the Ministry of Labour for what we call excessive overtime. He suggests that

these two things together are going to be sufficient to deal with the coercion of forced overtime that, in our experience, is quite rampant for Ontario workers.

The truth of the matter is, these measures are not going to protect workers from the exploitation that the ministry is seeking to address. In the real world out there, workers have to do what the boss asks or they lose their job. That's certainly the experience of the people we work with; that's certainly the experience of Woody and his co-workers. Non-unionized workers have no choice to refuse to sign agreements with employers. Without just-cause protection, a worker can't refuse to sign an agreement. Employer-employee agreements in non-unionized workplaces simply are not effective tools in regulating hours of work and employment standards and, as a central part of this platform, are fundamentally flawed.

Second, in our experience, we've had these employer-employee agreements since the ESA 2000. Frankly, a lot of employers aren't using them and the ministry isn't actually enforcing them. The majority of people we work with are required to work overtime beyond 48 hours when requested to do so. We've only had one worker come forward who actually said he was asked to sign one of these agreements. Employers aren't complying with them, in a lot of cases, because the ministry is not enforcing them. Again, we've had countless cases of people working excessive overtime beyond 44 and 48 hours, and in investigating those claims for unpaid overtime premium pay, the ministry is not investigating whether there were agreements in place, whether there was coercion or penalties for workers, in the cases where there were agreements, if workers didn't sign. They haven't been an effective tool in those cases where they're actually being utilized.

The minister told this committee last week that workers don't have the bargaining power to effectively say to their employer that they don't wish to work long hours. We agree with that. That's why workers need just-cause protection instead of agreements, so that the employer can't fire workers for refusing excessive overtime.

The minister went on, the last time he met with you, I believe, to address workers' lack of bargaining power and their basic inability to sign agreements, saying that he was going to return to the permit system, as part of the approval process, to address that. Yet the approval process considered by Bill 63 does not involve investigating those workplaces to see if those agreements are actually authentic representations of workers' choices, if they were coerced or if workers faced penalties.

In our mind, Bill 63 has to be totally amended to ensure that the Ministry of Labour is investigating each and every agreement between employers and employees to work excessive hours and that they were truly signed without coercion or fear of reprisals. Without this, the agreements are basically worthless and, indeed, the approval process will be basically a rubber stamp.

The third key problem for us around Bill 63 is returning basically to the pre-ESA 2000 permit system. There

were huge, widespread abuses. I'm sure people are familiar with the Ontario task force on hours of work and overtime that estimated that for every one hour worked under the permit, 24 hours of overtime were worked without a permit. To address this problem, the minister has promised to increase proactive inspections. There were about 350 proactive inspections last year; they're committed to 2,000 this year. But there are about 350,000 employers in Ontario, so basically what we're looking at is increasing employers' risk of being caught from 0.1% to 0.6%. There still is really no risk of employers being caught violating the law. We need a fundamentally new model of enforcement which brings enforcement of employment standards and hours of work into Ontario workplaces.

I don't have time, unless people are willing to give me more of their 15 minutes, but in the package I've passed around I want to draw your attention to a supplement outlining a strategy for bringing enforcement into Ontario workplaces. I encourage people to look at that, because I really think we have to move in that direction if we want to consider addressing the real problems facing workers with respect to hours of work.

Fourth, and finally, Bill 63 basically slices off maximum workweeks and overtime averaging from the overall package of hours of work provisions. This is bad public policy. You can't just take that out of the big picture shaping people's working lives. We're seeing a growing polarization of work lives. Some people have way too much work, some people don't have enough hours and people are increasingly in precarious kinds of work. This is partially responsible for the growing gap in income between the rich and the poor and, increasingly, a growing racialized gap. My colleague from TOFFE is going to speak more about that, but I'll just say that we need sound public policy development that locates hours of work within its whole framework and that really looks at how to reduce unemployment, relieves work stress and allows people to balance family and work lives. We see that Bill 63 is fundamentally moving in the opposite direction.

In terms of recommendations, I've got a few specific recommendations.

In looking at how to approach the hours of work issues, we need some fundamental principles. We would argue that those principles are the need to reduce maximum hours of work to enable people to balance their work life and their family responsibilities to actually become active and involved citizens. We need to ensure a healthy economy with jobs that can provide a stable income and a living wage. We need to address the rise in precarious and low-wage jobs that are increasingly gendered and racialized by regularizing and more equally distributing hours of work. Those are the principles we feel we need to begin guiding us in looking at a reshaping the hours of work provision.

A key part of that is to bring Ontario in line with what's happening in the rest of Canada, and that is people moving to a 40-hour workweek with overtime after that.

The majority of Canadian workers enjoy that provision, so we need to move to a 40-hour workweek and an eight-hour workday with an overtime premium after 40 hours.

In addition, when we begin to look at overtime, we have to look at excessive overtime being an exceptional circumstance and not the norm. In our mind, permits should be considered only when there are demonstrated efforts to recall employees on layoff, offer part-time workers more hours and hire employees. Only when those things have been satisfied should excessive hours work permits be considered.

Returning to government approval of excessive overtime, Bill 63 kind of stops halfway to the previous permit system. Under the previous system, workers retained the right to refuse overtime after eight hours or 48 hours per week. Bill 63 refuses to do that; they have to give two weeks' notice. There were also limits on permits on an annual basis. Bill 63 doesn't entertain that. We would argue that in setting up permits for excessive overtime in exceptional cases, we need clear annual limits per employee. We would argue that those annual limits should be set at 100 hours per year per employee. Annual permits must also set a weekly cap—for example, 50 hours per week—or, at the very least, a quarterly cap to avoid the bunching of overtime, which causes significant health problems.

1620

We also argue that workers must retain the right to refuse overtime each and every day. The two-week requirement in writing would cause significant problems for people if you have a family or if you have other obligations. You're basically putting people in a situation where they're going to have to choose between, "Am I going to risk losing my job?" or, "Am I going to deal with my family crisis that's arisen?" So that certainly has to go, in our mind.

The Chair: You have about two minutes left.

Ms Gellatly: OK. In coming toward the end—

Mr Kormos: That means you won't have time for questions. I want to be able to ask you if you want this bill to pass.

The Chair: Could you please continue? You have two minutes left.

Ms Gellatly: I will run through it very quickly. One of the strong things we'd like to see is that we have to get rid of the 30-day approval process currently being considered with Bill 63, because it doesn't involve investigating what's happening in the workplace and workers' real consent or lack thereof to working excessive hours. We need to certainly have just-cause protection so workers have a real right to be able to choose or not to choose overtime. We need anti-reprisals provisions strengthened.

Just jumping ahead, I guess the big thing, or one of the significant issues for us is that we want to see overtime averaging revoked in its entirety. Overtime averaging is a huge gift to employers; it does not benefit workers in any way. It's about people working longer hours for less pay. In our mind, it has to go, not only because it is a huge

cost to employees but, again, because it's bad public policy. It's about giving employers the power and control to have incredibly erratic work schedules, which are not healthy for workers, not healthy for workers' families, not healthy for our communities. So we would like to underscore that overtime averaging has to go in its entirety.

Those are our main recommendations. I've skipped over some; please look at them in the submissions I've made. We certainly urge the committee and the Liberal government to fundamentally rethink the approach on hours of work.

The Chair: Ms Gellatly, thank you very much for—

Mr Kormos: Do you want the bill to pass?

Ms Gellatly: Peter, what do you think? I think not.

Mr Kormos: OK, you've got to say it or—

The Chair: Thank you, Mr Kormos, for your commentary. Ms Gellatly, thank you very much for your informed presentation today.

TORONTO ORGANIZING FOR FAIR EMPLOYMENT

The Chair: I'll now ask the presentation of Toronto Organizing for Fair Employment to come forward. Ms Berinstein and Ms Singh, I believe.

Ms Juana Berinstein: Sonia Singh actually isn't here, so it's just me, Juana Berinstein, who's here.

The Chair: Thank you very much. You have 15 minutes, and any time that's not taken by your presentation will be open for questions. Please proceed, and welcome to our committee this afternoon.

Ms Berinstein: Thank you. Hello, everyone. My name is Juana Berinstein, and I'm here representing Toronto Organizing for Fair Employment. Our acronym is TOFFE, so when I refer to TOFFE, you'll know what I'll be talking about.

We're here because we feel it's important to stress to this committee that discussions about work hours have to be grounded in an understanding about the reality of work, which, for a growing number of people in this province, is a reality marked by insecurity and poverty wages.

First, though, let me just tell you a little bit about TOFFE. At TOFFE, we seek to improve the employment conditions of people who are engaged in non-unionized, low-wage and precarious work. We reach hundreds of workers every month through workshops and phone calls. The workers who come to TOFFE come from very diverse sectors.

At TOFFE, we work predominantly with women, racialized communities and immigrant communities. Many of us face a great deal of job and income insecurity as a result of the current labour market in which precarious jobs are on the rise. In other words, though most of us and most of the people who come through TOFFE would like full-time, secure and well-paying jobs, many find that increasingly only part-time, temporary, contract

and often low-wage jobs are available. Bill 63 will affect the workers who come through TOFFE.

The committee has just heard a presentation from Mary Gellatly of the Employment Standards Working Group. TOFFE is a member of the working group and supports the points for consideration and specific recommendations that Mary Gellatly made here today. So in the interests of time, my presentation is going to focus on one other key issue that we urge the standing committee to consider. Specifically, TOFFE would like to talk about the link between overtime and bad jobs and between overtime and underemployment and unemployment.

Both statistics such as the recent Atkinson report on jobs and the experiences of TOFFE confirm that work is increasingly being polarized into good jobs at one end and bad jobs at the other. Overtime and hours of work have a lot to do with this. I'd like to talk here about two trends that lead to bad jobs. First, many workers work too much. Bill 63, on the outside, seems to agree with this assertion but doesn't go far enough to protect workers against excessive hours of work.

Take Hong, for example; he's a member of TOFFE. He's been in Canada for less than a year. He has a master's degree but could only find work washing dishes at a restaurant in Little Italy. On paper, he was scheduled to work eight-hour shifts, six days a week, but he was often told to work longer, with no overtime pay. When Hong tried to talk to his boss about this, he was told that if he wanted to leave work earlier, he should work harder. So Hong and many other workers work overtime because they have no other choice, because they have little power in their workplaces and because they are afraid to lose their jobs if they refuse.

Another reason people work overtime, especially in situations where they do receive pay, is that their wages are so incredibly low. Many workers just can't support their families; they can't make ends meet on the minimum wage. In fact, hopefully most of you remember that last week Campaign 2000 released their report on child poverty, which specifically talked about this phenomenon of the working poor. On one hand, we have people who work too much and aren't properly compensated for their work, but on the other hand, we also have workers who come to TOFFE to tell us that they can't get enough hours of work to pay the bills.

Take Alice, for example, another member of TOFFE. She works as a personal home care attendant, but she has only been able to find work through a temp agency. This means she never knows how many hours she will work in any given week or in any given month. The temp agency just calls her when they need her. Sometimes they call with no notice at all, and Alice has to run out of the house, after having been awake all day, to work a night shift.

Like Alice, many workers tell us that they don't work enough, that they can't find full-time jobs even though they want to; they can only find part-time or temporary work. "Too much work on one hand, not enough on the other," this is what we hear at TOFFE all the time;

workers who are asked to work overtime and workers who can't scrape enough hours together. These two problems are interrelated.

The Donner report, which the Atkinson Foundation has recently re-released, shows that decreasing the number of overtime and work hours can lead to the creation of new jobs, that there is in fact a correlation between these two. However, this only works if people are compensated a living wage for their work, so that people do not have to work excessive hours to make ends meet at the end of the month and still have a decent standard of living.

Bill 63 doesn't do enough to reduce the number of hours worked or, as a result, to stimulate the growth of new jobs. For example, Bill 63 allows overtime averaging, which, as Mary Gellatly has already said, is not only a huge gift to employers but, further, doesn't stimulate the creation of new jobs—something that is surely needed in this city and province.

It is directly as a result of the experiences of workers at TOFFE that compels us to speak before the committee today. We strongly feel that Bill 63 does not adequately address the concerns of working people. Bill 63 does not adequately address the link between hours of work and quality of life. While some are overworked, others do not have enough work to support themselves.

It's hard when people can't find work to support themselves and their families. Indeed, the growing gap between rich and poor is directly related to hours of work. Research indicates that the redistribution of work hours is central to a redistribution of earnings. Some people are working very long hours while other people don't have enough hours of work. Ontario's unemployment rate hovers around 7%, and the rate of underemployment is much higher. As a society, we need to commit to an hours-of-work and overtime policy that reduces excessive overtime and supports the creation of good jobs.

1630

In Ontario, over one million workers put in extra hours with pay each week, totalling about nine million hours of paid overtime, which is equivalent to one quarter of a million full-time jobs. But instead of decreasing overtime and encouraging new job growth, overtime has been increasing over the last 15 years. That number is from Stats Canada. For hourly paid workers in manufacturing, the Stats Canada report shows that overtime has increased by more than half in the last 15 years. In some industries, overtime has increased while the number of jobs has stagnated or declined.

Furthermore, these long hours of work are damaging people's health. It doesn't take a rocket scientist to figure out that the more people work, the more exhausted they'll be and the more likely they are to be sick. In fact, we have reports to substantiate this. I hear this from workers all the time at TOFFE. They're exhausted and their health is deteriorating.

For many, working overtime not only causes exhaustion but raises the likelihood that they will be hurt on the

job. According to the Workplace Safety and Insurance Board, for example, temp workers have one of the highest rates of on-the-job injuries. Recently, one temp worker who called TOFFE told us that she had lost her finger in a machine in the factory where she worked. She is a temp worker. She was working 12 hours a day at the time, six days a week. Her assignment was constantly changing, so she was constantly being sent to different factories, different worksites. So it's no surprise, when we consider her exhaustion and the fact that she had to constantly learn how to use new machinery, that this resulted in a serious accident.

The phenomenon of increasing overtime is a serious social issue that creates work-life conflicts for working people. Workers feel overloaded by the demands placed on them at work and the challenge of having to balance these demands with family and community commitments. Many workers have told me about the injustice of working so hard and having such little time at the end of the day to care for themselves, their families and their communities.

I wanted to share some of the experiences of TOFFE workers and talk about interconnected problems about too much work and too little work, because they're an important factor to consider when writing legislation about overtime and hours of work.

Given the issues that TOFFE has raised today, we fear that Bill 63 is slicing off the issue of overtime from its broader context: the reality of work in the city and province today. It is not taking into account the serious problem of underemployment and unemployment, the growth of precarious jobs and the burden of excessive hours of work for low-wage earners. As a result, Bill 63 will lead to little real change for Ontario's workers, who will still be forced to work for longer hours at less pay due to overtime averaging, longer work days and permits that will allow for work beyond the maximum workweek.

Working people deserve better. Working people need a policy that allows us to spend less time at work. We deserve a policy that allows working people to work a full-time week and still live above the poverty line. We need government policy to create more good jobs and ensure that people's rights in the workplace are protected and enforced.

TOFFE feels strongly that discussions of work hours must also include a discussion of how people are compensated for their work. How much people work cannot be separated from how much they are paid for that work. This is especially the case for low-wage workers. When someone working full-time, earning minimum wage, still lives far below the poverty line, it is no wonder they feel forced to work overtime. It's just not fair. People who work full-time shouldn't need to go to food banks or live in substandard housing; no one should, for that matter.

In the 1970s, the minimum wage was sufficient to provide a family of three with a wage that would meet Statistics Canada's low-income cut-off line. That's no longer the case. Ask low-wage workers why they're

forced to work overtime, and they will tell you that it's because the wages are too low to survive on. We need a minimum wage policy that does not force people to work excessive hours.

Study after study has demonstrated that poverty is on the rise and that it is increasingly racialized and gendered. Some 31% of all women workers and 38% of women of colour in Ontario, for example, earn poverty wages, and 41% of recent immigrants, who arrived between 1990 and 1999, earn poverty wages in this province.

Working people—low-wage, non-unionized workers—will pay a high price for Bill 63. Some will work overtime in order to make ends meet, despite the toll this will take on their health. Others won't find anything but precarious jobs. Good social policy should strive to enable people to work less, not more, and ensure that people can afford to live above the poverty line without having to work excessive hours.

We urge the standing committee to consider the need to cut overwork and, as a result, stimulate the creation of more good jobs. Thank you.

The Chair: Thank you very much for your presentation. We have about two minutes left in this rotation. We'll go to the official opposition first. Mrs Witmer, do you have any questions?

Mrs Witmer: No, but thank you very much for your presentation.

The Chair: Mr Kormos, you're next.

Mr Kormos: Bless you. I'm trying to keep track of where the participants stand on this bill. The human resources professionals oppose the bill. They don't want the bill to pass.

The Chair: Mr Kormos, do you have a question for our presenter? A question please.

Mr Kormos: Hold on, Chair. The Employment Standards Working Group says no. Should the bill pass in its present form?

Ms Berinstein: No.

The Chair: A question please.

Mr Kormos: Don't get your knickers in a knot. I'm using my two minutes. We asked a question and we got an answer. God Bless. Thanks for coming here today.

No, this bill should not pass. That's three out of three so far. Maybe the OFL supports the bill; I don't know. We'll find out. This bill should—

The Chair: Anything further, Mr Kormos?

Mr Kormos: Hold on. I'm writing this down. This bill should not pass. OK. Thank you very much.

The Chair: We have 30 seconds left. I'll go to the government. A quick question, Mr Flynn?

Mr Flynn: I'm not sure if you were in the room for the first presentation, but the gentleman who came forward from the Human Resources Professionals Association said the bill went too far and it was too cumbersome. Presumably, Mr Kormos agrees with that. Where would you sit? Does the bill go too far? Does it not go far enough?

Ms Berinstein: I think the issues we're talking about are different issues. In terms of the kind of social policy that our members at TOFFE would like to see in terms of a work-life balance, this bill doesn't go far enough—

Mr Flynn: OK, it doesn't go far enough.

Ms Berinstein:—in that it doesn't actually create any significant changes from what is currently happening, which is that workers are essentially being forced to either work overtime or just don't have enough hours they can scrape together to make ends meet.

Mr Flynn: Is the status quo better, or is this proposed bill better? Does it make it worse, I guess would be the short question.

Ms Berinstein: It's a bad situation, and it's not being made any better by this bill.

The Chair: Thank you very much, Ms Berinstein, for your presentation today.

ONTARIO FEDERATION OF LABOUR

The Chair: Next, I'd like to welcome Mr Samuelson, president of the Ontario Federation of Labour, and Mr Chris Schenk, research director. Welcome, gentleman. Thanks for being with us today. You have 15 minutes, and in any time that's not taken up, we'll have questions.

Mr Wayne Samuelson: Thanks a lot. It's a pleasure to be back here at the Ontario Legislature talking about hours of work once again. I will try to be brief and allow some opportunity for discussion and questions, because our positions are pretty clear; we've given them to various political parties over the years. I want to deal a little bit with some of the issues that are dealt with, and that are not dealt with, in this piece of legislation.

First of all, this legislation, while it says it's getting rid of the 60-hour workweek, actually is not. What it does is provide for the 60-hour week by blending a permit system with a personal agreement system. So in effect, the 60-hour workweek isn't gone, it's just that someone has to ask the government before they work the 60 hours. As a public policy, the debate that should take place in this area is a debate about restriction of overtime, about ways that we deal with a growing contingent workforce that the previous speakers have spoken to you about.

1640

I can tell you that I get calls every day from workers who are in bad situations working a string of part-time jobs. Frankly, the debate that should take place is a debate about overtime and the fact that some people are working more hours just to survive.

I've got to tell you that when we saw the issue of a permit system, we looked for what the criteria would be for the permit system. We really didn't see them, except we did see some reference that there wouldn't be extensions for the 60-hour workweek unless the employer had lived up to employment standards and safety legislation, which is really interesting when you think about it. What it means is, the employer can work the employees more than 60 hours if they live up to this set of rules over here, which really doesn't make a lot of sense to me.

In effect, what has happened is, instead of really dealing with the issue, you've kept things like the Tory provisions for individual letters, you've kept the 13-hour day provisions the Tories brought in and you didn't deal with what we've always said needs to be in place, and those are fundamental rights and protections for people who are being exploited, primarily in non-union workplaces, for just-cause protection.

I want to zero in on overtime averaging. I can't understand why you didn't deal with this. Instead, you've actually made it worse. As you will know, before the Tories changed the laws, it was pretty easy to understand. If you worked more than 44 hours, you got time and a half. The Tories brought in this thing where you can average it over four weeks.

Our reading of the bill is that you can get a permit and now you can average it over a year, but you can only do that if you don't break a whole bunch of other rules. Why you didn't simply look at how you pay overtime and look at what had been in place in this province for many years and adopt that system is beyond me.

Let me just say bluntly that what you need to do is get rid of all of the previous Conservative averaging provisions. Let's talk about a workweek of 40 hours, not 44. Let's have some criteria and really play a role in getting rid of excessive overtime so that more people can share the good-paying jobs that are out there.

I'm sure the previous speakers, although I didn't hear them, talked about the need for more enforcement. I got another call yesterday from 19 workers who have been trying to get paid for a year by an employer who shut down the store in one place and opened up down the street. Frankly, we should look at some just-cause protection.

I'm going to let Chris deal with a technical change we've been trying to convince the government to adopt, and then I'll be pleased to hear some questions.

Mr Chris Schenk: Just one further point, and that is, in our view, there's an unintended consequence of Bill 63: It blurs some of the differences between how the act works for non-union employees and how it works for unionized employees.

For unionized employees, generally, the union and the employer negotiate overtime provisions etc. Here we have the added provision for averaging of overtime. In our view, it's not clear, but it should be, that for averaging, the union is also the party that needs to be dealt with, not the individual. There's a loose piece of paper stuffed in our submission that we gave to you, and we would draw your attention to it. It provides what we think is clear language to rectify that concern.

Mr Samuelson: I'm anxious to hear your stimulating questions.

The Chair: Thank you, gentlemen. On this rotation, Mr Kormos is first.

Mr Kormos: I'm going to be very brief. I want the government members to have all the time they need with you.

I'm just keeping a list here. You're the fourth presenter. The first didn't support the bill. The second doesn't

want the bill to pass. Does the OFL want this bill to pass in its present form?

Mr Samuelson: No. We should send this back to the drawing board.

Mr Kormos: Excuse me, Chair. "OFL: This bill should not pass."

Please, Chair, let the government members just tear these witnesses to shreds with their scathing questions and observations and challenging cross-examinations.

The Chair: Do you have any more questions, Mr Kormos?

Mr Kormos: Obviously not. I just ceded the floor to the government.

The Chair: I just wanted to make sure. I want to make sure everybody's treated with fairness here.

We next have the government side. Mr Flynn, please.

Mr Flynn: I appreciate the presentation. In 2.2 of the presentation you're saying, "Bill 63 allows 60-hour workweeks and more," which is true. Is there anybody within the membership of the OFL to which that would be a peculiar requirement of their job or trade? Are there certain trades that do, from time to time, have to work—

Mr Samuelson: Absolutely.

Mr Flynn: Which ones would they be?

Mr Samuelson: I was one of those workers when I worked in the plant. You talk about our membership of maybe 650,000 or 700,000 members. There certainly are situations where it makes a lot of sense, where it's absolutely required to work long hours, a long day. I'll give you an example.

I worked in the maintenance department in a tire factory that required steam in the winter. If the steam line froze and you started to thaw it, you couldn't stop until it was all done.

That's not what we're talking about here, and that was covered under legislation for years. There was no averaging of overtime. There was no scam by the government and employers to make people work for less money. If the suggestion is that somehow because there are a few examples where people in fact are required or must work excessive hours, that's fine, but that's no excuse for bringing in legislation that's going to impact hundreds of thousands of people.

Mr Flynn: Just so I understand, then, do you want the change made to allow those groups to still be accommodated, or do you want the change made that would prohibit them from doing what they're able to do now?

Mr Samuelson: Which groups?

Mr Flynn: The group you're talking about. I guess it was—

Mr Samuelson: Those handful of people in the plant?

Mr Flynn: Yes.

Mr Samuelson: The plant I worked in, 1,000 people worked there. This probably applied to six or seven people once or twice a year. I think any reasonable person could understand why you would need a provision in law to provide for that small example, but that doesn't require a law that says, "You can apply for a permit. By the way, there are no criteria except you have to be

good.” That’s what our understanding of the legislation is.

Mr Flynn: OK. You were talking about a specific job you were doing within a company. There are no specific trades to which 60-hour weeks—or people who move on to a project and just want to get it done quickly and move on?

Mr Samuelson: There are examples of that, which I’m sure you’ve heard of, in bush camps, things like that. The people who were here before me were talking to you about people who are being abused, being exploited. It’s happening every day. They call my office. So if you want to point to a few examples where someone’s in a bush camp in Atikokan and wants to work some excessive hours so they can get out of the bush, then that’s fine. It sounds like that’s where you’re going. But trust me, with laws like this, which open the door for a permit system without criteria, what you’re going to do is lead to people in—I’ll just pull an employer out of the air—call centres, having someone work 13 hours one week, 48 hours the next week, six hours the next week, 57 the next week, and averaging it so they don’t have to pay any overtime. That’s exactly what the impact of your legislation will be.

Listen, don’t take my word for it or the people who spoke before. We’ll be bringing you examples in a little while.

Mr Flynn: I have no reason not to take your word for that.

Mr Samuelson: OK.

Mr Flynn: I did have a question: When you’re asking about overtime beyond the weekly maximum, is your reading of the bill that you would be allowed to average for a year?

Mr Samuelson: Yes.

Mr Flynn: So we need to get that clarified.

Mr Samuelson: I think you should get rid of the averaging. Averaging was a bad Conservative idea and I think it’s an equally bad Liberal idea.

Mr Flynn: We agree on the enforcement aspect.

1650

Mr Khalil Ramal (London-Fanshawe): What about averaging time? In some situations, like people who work in health care, health care providers, averaging time works well for them. Myself, I worked with community and social services in a facility. I was required to work 12 hours one week and a shorter time the second week. So over the month or over a couple of weeks’ time, it would be averaged and it wasn’t considered overtime. So how do you consider that?

Mr Samuelson: You’re going to have to explain to me why, for years in this province, we had laws that said if you worked more than 44 hours a week, you got overtime pay. Now we’ve got a law that says you can average it. So you can work 44 hours one week, 12 hours the next out of 48 and not get overtime pay for those four hours. That’s the change that took place and the change you’ve continued.

So what you’re saying to me is that workers out there are going to say, “I guess that’s a good point. I don’t want that overtime pay for those four and a half hours or four hours.” In effect, that’s what you’re saying. You’re passing a law that’s taking away this overtime pay that people have had access to for years. I’m sorry, the previous government took it away, and you’ve continued down the same road. I don’t understand. I would argue that it should be 40 hours, but I don’t understand why you didn’t go back and get rid of the overtime averaging. That would have been the real change.

Mr Ramal: We’re talking about the nature of the job requiring that continuous service.

Mr Samuelson: The employer might require it. For the worker, if you’re going to take somebody and disrupt their life to that extent—“By the way, you can work 12 hours one week and 48, and then 16”—maybe you’re going to have to pay them some overtime if they work excessive hours in one week. You can’t average it out. I mean, people have commitments.

What it does, frankly, is force employers to figure out ways to make sure that people aren’t working 48 hours one week and 13 and 56 the next. These employers, my gosh, can build buildings and cars. They can figure out how to make sure people aren’t working—

Mr McMeekin: A good computer program can do that.

Mr Samuelson: Sure, they can do it, but they can do everything. You know what? You could have done it, and you still can. I have faith that you’re going to—I’ve known Kim Craitor a long time. He’s a great guy who understands these issues, I’m sure.

Mr Kim Craitor (Niagara Falls): Thanks, brother.

Mr Samuelson: I’m sure, on reflection, he’ll whisper in my good friend Kevin Flynn’s ear and common sense will prevail. I can sense it.

The Chair: Thank you for being with us today. Your presentation was very informative.

Mr Samuelson: Thank you.

Mrs Witmer: Excuse me, Mr Leal.

The Chair: I’m sorry. Time was up, but if you had a quick question—

Mr Samuelson: That’s not very fair.

Mrs Witmer: We’re all entitled to the same—

The Chair: Quickly, Mrs Witmer.

Mrs Witmer: I just want to congratulate Wayne for being here today. I guess the one thing I would say to him, having known him for a long time, is he does have a sincere commitment to the workers in this province. I think some of the points that he’s made point out that this legislation certainly isn’t going to meet their needs. As we see it now, there seems to be nobody in the province who’s happy with this legislation. So maybe Mr Craitor can prevail on Minister Bentley to change it and withdraw it.

Mr Samuelson: I’m going to be watching for Kim to be sneaking up to talk to Bentley and try to convince him.

The Chair: Thanks again, gentlemen.

Mr Samuelson: Thank you very much.

JUSTICE FOR CAMPUS WORKERS

The Chair: Justice for Campus Workers: I believe Mr Hill is here. Welcome, and you have 15 minutes.

Mr Jonathan Medow: Thank you. I'm Jonathan Medow, a student at the University of Toronto, and this is Matt Hill, an alumnus of the University of Toronto. We are both members of Justice for Campus Workers, a branch of the Ontario Public Interest Research Group at the University of Toronto.

Justice for Campus Workers is a University of Toronto student group founded in September 2004 to mobilize student support around the issue of University of Toronto cafeteria workers living in poverty. There are about 200 non-union cafeteria workers on the university campus who work for Sodexo, a company that has an operation in this very building. Working for this food service contractor, most workers are making \$8 to \$9 an hour, in some cases after 12 to 15 years of work.

Sodexo wages are poverty wages. There is currently an organizing drive underway by Sodexo cafeteria workers and UNITE HERE to get Sodexo to voluntarily recognize UNITE HERE as a collective bargaining agent. Seventy percent of workers have signed a public petition asking Sodexo to voluntarily recognize the union. At this point, Sodexo has refused to recognize the union, and the University of Toronto has refused to intervene on behalf of cafeteria workers.

Through our experiences working on the Sodexo campaign, we have become very interested in issues facing unorganized labour. While the Employment Standards Act is the floor standard for all Ontario workers, it most profoundly affects unorganized labour. We applaud the current Liberal government's intention to re-evaluate changes made to the ESA under the previous government; however, we have some serious concerns.

This is an opportunity to bring labour standards in Ontario up to speed with many other parts of Canada. While our presentation today will focus on the effects the ESA has on individuals primarily, we would like to briefly mention the importance of ESA reform in light of the current situation of unemployment and the growing problem of underemployment in Ontario.

A strengthened ESA is likely to be a vehicle for encouraging a more equitable distribution of work hours, increasing the number of full-time workers in the province. At a time when many people work multiple jobs in order to get by, encouraging better distribution of work hours should be a priority. In light of this situation, we urge the province to re-evaluate many of the aspects of Bill 63. The current government has said they wish to reinstate some of the protections for workers in the Employment Standards Act. Our group supports this government's intention to strengthen the Employment Standards Act, but believes that Bill 63 does not go far enough to (a) protect the rights of non-union workers to refuse unwanted overtime, and (b) protect the rights of non-union workers to receive overtime pay without averaging.

We urge the government to reconsider some of the proposed changes to Bill 63, especially in light of the power relations that we all know exist at work. We know the system of voluntary acceptance of overtime work is not adequate.

Mr Matthew Hill: My name is Matthew and I'll present the rest of our group's submission.

In terms of background to the recommendations we have for changes to the Employment Standards Act, Bill 63, in terms of hours of work, amends the Employment Standards Act to prohibit employers from requiring workers to work more than 48 hours a week without the written consent of the employee and ministry approval. This is an improvement over the previous legislation. We feel the main weakness of the new legislation in regard to hours of work is failing to remedy the power imbalance between employers and employees when coming to agreements about working more than 48 hours a week.

In terms of the imbalance of power between non-union employees and employers, the main threat in any non-union workplace is the threat of layoffs or other reprisals when you refuse to agree to change your conditions of work. Non-union employees rarely have much choice in agreeing or disagreeing to proposed changes to hours of work. In Ontario, employers have the ability to lay off employees without any explanation when providing either notice or severance in lieu of notice. This gives employers a powerful tool to get what they want from workers, as the threat of being laid off is implicit in many so-called voluntary changes to hours of work and conditions of work.

Beyond being laid off, there are all sorts of other reprisals that any company can use to coerce non-union employees into agreements. We've seen a lot of examples of subtly coercive types of company behaviour during the current union drive among cafeteria workers at U of T, and these are the same kinds of tactics that companies will use to get their non-union employees to agree to excessive overtime. The practices we've seen so far are getting your hours cut, so if you refuse to work more hours, they'll cut your hours; transfers of workers to new work locations without explanation, so they keep moving you around the campus to try to discourage you from being pro-union; creating a chill in how they deal with pro-union workers. Say one worker was taken aside by her manager during a union drive and told, "None of the other managers want to work with you, so you're going to have to work with me." It's sort of implicit that it's not going to be much fun working there. Recently, a couple of workers were arbitrarily suspended and then were reinstated after students complained, asking why workers were suspended. Many workers who are unpopular with management get very small raises each year. In some cases, some workers get four-cent-an-hour raises each year, so basically they're being discouraged from sticking around. That would apply also to workers who are being encouraged to work excessive overtime.

1700

Even if you work for a public institution, there is often excessive contracting out of services. So you can have

some workers who are protected by unions and have professional human resources departments that will deal with them appropriately; then you can have other workers at the same location, like at U of T, who work for contractors that are ruthless in their approach both to unions and to their employees.

In all of the cases we've mentioned in regard to these union drives, these are all subtle things we can't prove or relate to the union drive, but it seems there's a practice. We think these things would also apply to any company that wants to coerce their non-union employees into excessive overtime, particularly with private contractors or subcontractors where the big institution and the contractor can say, "That's not my problem; that's the other guy's problem."

Currently, Sodexo food-cafeteria workers at the university are not being asked to work more than 40 hours a week, so our critique of this bill is more general in terms of how it affects non-union workers across the province rather than the situation we're working in. But we can see that confusion over hours of work is prevalent in food services. In some food service locations on the U of T campus, workers get their hours cut arbitrarily and it becomes more difficult to get by. In other food service locations, workers are regularly kept one hour past the end time of their scheduled shifts due to the volume of work. In terms of employers, rather than hire more workers or allocate current workers more effectively, they'd rather force current workers to stay later without advance notice to keep labour costs down.

In terms of excessive overtime, it really conflicts with family responsibilities—parents, elder care givers. Excessive overtime can also affect an employee's ability to hold down a second job. When you're being paid so little—in the case of the workers we're working with, \$8 or \$9 an hour—many of the workers need to hold down a second job, even though that affects, once again, their ability to be caregivers to their family. But they're not able to figure out when they can actually have that second job, because on some days their hours are cut and on other days they are being forced to stay late. Their ability to hold down a second job becomes compromised. It's a Catch-22: They might agree to excessive overtime if it were available, but because they don't know when it will be available or not available, they don't know if they should get a second job or not get a second job.

In the act that the Liberals have advocated for, it says employers can revoke excessive overtime agreements "with reasonable notice," but it doesn't actually define what reasonable notice is. I think that should be clarified. If you've agreed to excessive overtime, how much notice would the company give you if you're no longer needed to work the excessive overtime?

In terms of a concrete recommendation that we would ask to be put into Bill 63, we think there should be protection from employer reprisals for employees who do not agree to excessive overtime. We're in agreement with the Ontario Federation of Labour that an anti-reprisal section needs to be included in Bill 63 in order to give

some meaning to the so-called "voluntary" agreement of non-union workers to work excessive overtime.

We support the inclusion of two measures in Bill 63 that aren't there right now:

We think there should be interim reinstatement of workers. In cases where non-union employees complain to the Ministry of Labour that their suspension or termination is related to refusing to agree to excessive overtime, the worker should be reinstated while the complaint is investigated by the ministry.

Our second recommendation in regard to that is just-cause protection. In these same cases where non-union employees complain they've been suspended or terminated for refusing to work excessive overtime, the employer should have to prove to the ministry just cause in the suspension or firing of the employee when a non-union employee makes such a complaint. With unionized workers, they already have grievance procedures to protect them. We need the ESA beefed up to protect the vast majority of workers in the province who don't have union protection.

We're also puzzled by the averaging of overtime in the act. We fail to see why averaging of overtime is required, either under the previous act or under the amendments of Bill 63. When workers voluntarily agree to long hours of work, they should be compensated with overtime pay past a certain number of hours per week without averaging. The current legislation, like the previous legislation, still allows for excessive averaging. It just changes some of the mechanics of how it's agreed to.

We totally believe that overtime hours are often necessary for business reasons to accommodate periods of high demand and production. We also feel that overtime is often desired by employees as well, because they need the income. But the fact that a company needs more people to work longer hours and the fact that a worker wants to work longer hours—we don't see the policy connection between that and what you're paid for those longer hours. If you've agreed to work longer hours and your company wants you to work longer hours, they should pay you more for those longer hours, time and a half, like it was before the Conservative legislation. So there's no policy connection between, "We've got to produce more widgets," and the need to average overtime and how to pay for those widgets to be produced. It's just a gift to the employers, really.

Our second recommendation on Bill 63 is that there should be no averaging of overtime. Our group recommends that there be no provision for averaging of overtime in Bill 63.

We're now open to questions, if you like, and we'd like to thank you for taking the time to listen to us.

The Chair: Thank you very much for your presentation. We have about six minutes or so left in this rotation. We have the government side first. Ms Wynne, please.

Ms Kathleen O. Wynne (Don Valley West): I just want to ask a couple of questions. First of all, I think you

addressed it, but with many of the items you raise you're not making a direct comment on Bill 63. You're talking about other issues to do with workers in terms of some of the things that Sodexo has done specifically. So you're not expecting that Bill 63 would address those issues.

Mr Hill: No. We're saying that the kinds of reprisals companies make during organizing drives are the same kinds they would make against employees who refuse to work excessive overtime because they've got a second job or they have to look after their sick grandmother.

Ms Wynne: OK. The second thing: If there's a continuum between a bad situation for labour—which I think was produced by the previous government; we might agree with that—and a good situation for labour, does this bill move us at all along that continuum toward a better situation for our workers? You need to know that certainly the intention of Liberal members is, as with so many sectors, to improve the situation in Ontario that was made so difficult for people in the previous regime. Can you just talk about where on the continuum this bill might take us?

Mr Hill: We found the bill overly cautious. The Liberal government has a big majority, and there's no reason to be timid. Labour protection was probably better under the Bill Davis government than what you're proposing in this new bill. You have authority. You've moved slightly ahead with this bill. But be bold; move further ahead. There's no reason to be so timid with this bill.

Ms Wynne: OK. I just wanted to be sure that we're moving in the right direction, from your perspective. We haven't gone far enough, which is what I hear a number of people saying, but we are pointing in the right direction. The ship is being turned around. Is that a fair statement?

Mr Hill: It's more like the ship has come to a stop.

Ms Wynne: OK. Thank you very much.

The Chair: Mr Ramal, please.

Mr Ramal: I and my colleagues thank you for coming here and presenting for us your comments about Bill 63. I was asking a question to the previous presenter—you're talking about averaging. If you're averaging, sometimes you work 48 hours and the second week you work 32 hours. Basically, it's working for a lot of people. A lot of employees want that system because they can take three or four days off at the end of the second week as compensation for working an extra eight hours the first week. Don't you think it's a good mechanism to be applied in certain sectors of our workforce?

Mr Medow: I guess what we don't understand is why some standards apply to the week alone and other standards can be stretched across weeks. We just don't see—

Mr Ramal: Because of the nature of the work. If you're working in health care, for instance—nurses or support workers—sometimes it requires a shift from 7 to 7. Do you see what I mean? You cannot cut them off at eight hours and go back, like 3 pm to midnight and midnight to 7 o'clock in the morning. So people would

rather work from 7 pm to 7 in the morning, a continuous shift, because of the nature of the work.

Mr Medow: We feel it's very important that overtime is calculated on a weekly basis. If a worker is working overtime within the period of a week, in most situations we feel it would be appropriate to be calculating overtime in this way.

The Chair: Mr Arnott, if you have any questions, and then Mr Kormos.

Mr Arnott: I would argue that the ship has run aground, but I might not yet have unanimity on this committee.

Ms Wynne: You'd be wrong.

Mr Arnott: I certainly want to express my appreciation to your organization for making a presentation this afternoon and compliment you on your articulate and constructive approach. You've done a great job representing your views.

Our party believes that the labour laws in the province of Ontario have to be fair and balanced for all concerned and, at the same time, we have to have a labour law climate that encourages the growth of new jobs through new investment. I'm sure you monitored carefully what the Liberal Party said during the recent provincial election about this so-called 60-hour workweek that they had criticized the former government about. What did you understand was their commitment at election time in terms of this issue? What were you expecting they would do on this issue once they got into office?

Mr Hill: We expected them to end the 60-hour workweek. I think Wayne Samuelson earlier on said there may be some workers in some cases who need to work more than 60 hours a week, such as in bush camps or as railroad labourers; I was a railroad labourer. There are clearly situations where you may need to work more than that but, in those cases, you usually have union protection.

What the people from TOFFE were saying earlier on is that the people who are going to use these laws are people like call centres, contingent labour, food services—people who actually need a lot of protection, where it's not the case of the bush camp or the railroad labourer.

We expected that the Liberals would set a much higher standard or bar for agreeing to excessive overtime.

Mr Arnott: Cutting right to the chase, do you think the government has kept its promise or not?

Mr Hill: Not really, no.

Mr Medow: We also don't feel that this process is over yet, so we wouldn't necessarily be so quick to decide.

The Chair: Anything further?

Mr Arnott: Thank you very much, no.

Mr Kormos: I've got to be brief because the Chair gets excited. He's an excitable Chair.

I've been keeping a tally, as you know—one, no; two, no; three, no; four, no. Are you folks recommending that I support this bill that keeps 60-hour workweeks, that keeps averaging and that has the employee agreeing to

work overtime—it's really not that meaningful when it's either under economic coercion or the power of a boss to fire you. In the total scheme of things, should I be voting for this bill or voting against it?

Mr Medow: We would recommend that you vote against it.

Mr Kormos: What about other members? Should they vote against it as well?

Mr Medow: I would say so.

Mr Kormos: That's five out of five, Chair. Thank you, gentlemen.

The Chair: Thank you very much, Mr Kormos, for keeping a tally for us.

Interjection.

The Chair: It's very helpful.

Mr Hill and Mr Medow, thank you very much for coming.

Just to let committee members know, our 5:15 presentation by Henry Evans-Tenbrinke cancelled. Our next presentation will be at 5:45, so maybe if we have a short recess, hopefully Consuelo Rubio will be here a little early and we can get started. We can have a 15-minute recess, and could we come back at 5:30.

The committee recessed from 1714 to 1740.

CENTRE FOR SPANISH-SPEAKING PEOPLES

The Chair: We'll bring the committee back to order. Welcome, Ms Rubio. You have 15 minutes. Any time left over we'll have for questions from the committee.

Ms Consuelo Rubio: I've provided a copy of my brief. I tried to put something in writing so you have something to refer to.

As you can see, I work at the Centre for Spanish-Speaking Peoples, which is a community organization that has been around for about 30 years. For the past 25 years or so, I would say that the bulk of my work has been with vulnerable workers, particularly cleaners, factory workers, restaurant workers and farm workers. I believe that, with that experience, we're well-placed to comment on the bill, particularly with respect to the 60-hour workweek, and also on enforcement and monitoring of the Employment Standards Act.

I'm sorry that the minister isn't here today, because I would like to start by saying that we were very encouraged by some of the changes we saw at the Ministry of Labour initially. In particular, we were pleased to see their multilingual strategy and the fact that educational materials were being made available in languages other than English or French. The people we work with, as you can see from my presentation, speak Spanish.

We were actually looking forward to changes to the Employment Standards Act, in particular with respect to hours of work. We were vocally opposed to the amendments or sweeping changes to the Employment Standards Act in 2000 and even earlier in 1995-96. We were extremely disappointed to hear that the ministry had in fact decided to keep the 60-hour workweek and just make some little tinkering administrative changes so it would appear that things would be a bit more difficult for

employers with respect to obtaining consent from workers and monitoring that.

I have to say that every time I've met with Minister Bentley, I and other advocates for vulnerable workers have tried to express to him how opposed we are to the 60-hour workweek. I'm even more disappointed, because I understood that part of the Liberal platform, when they were seeking election, was to repeal the 60-hour workweek, not to make administrative changes so that making workers work a 60-hour workweek would be a bit more difficult. We feel that the bill just continues to legitimize abuse and exploitation of those workers that the Ministry has so many times vowed to protect.

Last Monday, I was in the room when the minister spoke about the changes and how the new system in place will be monitored and that enforcement, in cases where workers don't want to work those hours, will be swift. In all honesty, that would certainly be a change, both for the current administration and for those that preceded it. In any administration, we haven't seen enforcement as something the Ministry of Labour has devoted a lot of time or effort to.

Legislative changes with respect to reprisals in the Employment Standards Act, 2000, didn't translate into enforcement at our level. The reprisal changes, which were touted as a great protection tool for workers, have hardly, if ever, been used since their introduction.

We want to share with the committee what the 60-hour workweek has brought to our communities. Again, this is anecdotal evidence, but nevertheless, I think, very valid. Firstly, as the committee has undoubtedly heard many times today, workers do not refuse to work overtime because of fear that they'll lose their jobs if they do. The fear is not irrational. They have seen their co-workers being let go, and they do not want to be the next. In fact, I was a bit delayed today because today was my day to do intake at work, and just before I left a man came to see me who had been working 100 hours a week in 2001-02. Unfortunately, he is too late to make any claims under the Employment Standards Act. Working all those hours ended up in his having an industrial accident; basically, he was too exhausted to continue working. This is not an unusual thing. We see that regularly.

More and more often, we hear of families that can no longer supervise, care for or assist their children with their homework. We've heard of the troubles in our schools and, in some communities, including mine, a very high rate of school dropouts. I really cannot help but think that excessive hours of work by parents and poor school performance of our youth are related. We advised previous Ministers of Labour that this would happen and were accused of being like Chicken Little, a favourite expression of Minister Bentley's predecessor, Mr Stockwell. Every time I met with Mr Stockwell, that's what he called me.

Mr Kormos: That's what Bentley calls you too.

Ms Rubio: Time proved us right after all.

We have heard from other groups that even the agreement system is not used by employers. Generally, we

agree with that assertion. Ever since the 60-hour workweek was introduced, most of the time employers ignore even getting the consent of the workers and just make people work as many hours as they please. But we also have some direct experience with employers who have sent supervisors to the plant floor with 60 hours and averaging agreements and demanded that workers sign right there or else. Everybody signed. Those agreements aren't worth the paper they're written on: nevertheless they have held when there's been some scrutiny from the Ministry of Labour.

We're not comforted by the fact that ministry approval has to be sought. I suspect that the approval will be practically automatic. It would appear that while investigating claims takes at least two months—if you're lucky—those agreements will be approved quickly, and approval may be obtained by electronic means, fax or mail.

We are told that employers who have previously been found breaching the act might be denied permits. I just want to know how the ministry is going to monitor this when we're aware that there is no province-wide structure to track violations of the act. I'll give you an example. Just about a year or so ago, we were involved in a case and represented several workers from the same workplace. For reasons that we don't know, some of the files were sent out of Toronto: some to Peterborough, some to Ottawa. The officers in charge of investigating the files outside Toronto were not aware that the employer in question was a repeat violator who had routinely ignored the overtime provisions of the act. The Employment Standards Act provides for stiff penalties. I understand that in those cases, this did not happen. I believe this is a good example of good intentions and no action.

I thought I would end by mentioning farm workers, because I think they require special mention. As some of you know, many come to Canada under a special program, and they come mostly from Mexico and the Caribbean. Mexican workers have a special contract they sign before they come to Canada specifying that they must work a certain number of hours per day: eight. Those of you from that area, correct me if I'm wrong: Tell me if you know of any farm workers who work eight hours a day, five days a week. As you also know, farmers may request that they work more hours and farm workers may consent to work more hours; many of them want to work more hours. But in my experience and that of all of the farm workers' advocates I have worked with, those agreements are not respected. In fact, I have witnessed farmers coming around and rounding up workers to complete work on Sunday afternoon, the only day off most of them have. Although those workers fall under provincial jurisdiction, we have seen zero involvement by the ministry in preventing abuse or conducting proactive investigations. That's another example of how agreements in writing do not protect vulnerable workers.

1750

Lastly, we're opposed to overtime averaging and call on the minister to repeal this particular provision. At the time this was introduced, we called this a great gift to

employers, and after all these years, we're more convinced than ever that it certainly was. People earning \$7.15 per hour do not want time off instead of overtime pay. They want the money to be able to provide a better living for their families.

We're confident that repealing both the 60-hour workweek and the overtime averaging will not have the chilling effect on business predicted by the opposition. Rather, these two measures will certainly restore the modicum of equity and equality to workplaces that is so sorely needed.

The Chair: Mr Arnott, you're first. Do you have any questions?

Mr Arnott: Yes, I do. Thank you very much for your presentation. You mentioned at the outset of your presentation that the members of your organization at times have difficulty facilitating access to educational materials for workers who do not speak English or French. Of course, the two official languages in Canada are English and French. By and large, we use English in terms of our commercial relations and our public life in Ontario, and French is very important, although it's not a second official language in Ontario, though for all intents and purposes, it probably should be.

Ms Rubio: There are practical considerations. Sir, with all due respect, you have to deal with reality. In Toronto, about 50% of the people do not speak either of the two official languages. I think you have to get used to the new realities of this country.

Mr Arnott: You're misunderstanding what I'm trying to get to. I was going to ask, what more can we do to make sure that people who don't speak French or English have an opportunity to learn what their rights are as workers? I was wondering if you'd give us some concrete examples of what kinds of obstacles your members run into because they don't have the opportunity to get this information in Spanish?

Ms Rubio: I think the minister has taken some initial good steps, but more needs to be done. Many of the materials are available only by electronic means, and not everybody has access to that. I think the ministry should have campaigns; I mean going out into the field and just delivering educational materials to community organizations, providing information in the newspaper and so on.

Mr Arnott: The government members are nodding their heads and saying they're doing that, but obviously there's a disconnect here, because we've heard that more needs to be done. I'm just trying to get to the bottom of what exactly needs to be done. Hopefully, some dialogue will ensue and the ministry will respond.

Ms Rubio: There is also a second element of this. We should look not only at providing these materials in the languages, but also at the fact that the Ontario government has pretty well bought out of English-as-a-second-language for immigrants, and I think it's important that they continue. That's an investment you're making, because in the long term a more fluent workforce makes for better communities.

Mr Arnott: I agree. The faster someone can pick up the language when they come here, the better.

Ms Rubio: That is both the federal and the provincial government. I don't want to leave the federal government out. They're moving out of the English-as-a-second-language business.

Mr Arnott: Just in conclusion, I would agree that we need to do more, and I would encourage the government to consider what you've said.

The Chair: Mr Kormos, you're next in the rotation.

Mr Kormos: Thank you very much for your comments. I come from down in Niagara region, so I'm very familiar with the Mexican and Caribbean workers who come to Niagara, as they do to other parts of Ontario—

Ms Rubio: Virgil.

Mr Kormos: You've got it. I'm also very familiar with the UFCW, of course, with their seasonal office down there doing advocacy. Really, part of the answer is letting agricultural workers organize into trade unions and collectively bargain, isn't it?

Ms Rubio: Yes. I agree with you.

Mr Kormos: I'm sure you don't find it at all humorous that these workers are denied the right to organize into trade unions.

Ms Rubio: No, not a bit. Every time we talk about unionization of farm workers, the example of the family farm is brought out. In fact, those of us who actually work with farm workers are very much aware that the family farm as we know it is going. There are agribusiness employers in Virgil, as you know, who employ hundreds of workers, in Leamington, the same thing. I believe it's time for those workers to become organized. I mean, the abuses we see at every level, not only in terms of working conditions but living conditions too, are appalling. I invite you to go down and see it yourselves. It's one thing for me to say it here, but it would be another for you to go to that area—to Leamington, Georgetown, Newmarket, Bradford, Brantford—and see it.

Mr Kormos: And agricultural workers work in among the most dangerous workplaces in all of Ontario and Canada.

Ms Rubio: Correct. Yes.

Mr Kormos: So here I am. I'm with the NDP here at Queen's Park. Are you putting to me that I should support legislation that retains a 60-hour workweek, that retains averaging and that lets workers—

Ms Rubio: No. Every time we've met with Minister Bentley, myself and other colleagues, we've told him, "You need to repeal this."

In all fairness, even before the Employment Standards Act, 2000, there were people who worked 60 hours, but then it was illegal. Now it's a given that if your employer asks you, you just have to do it. Just requesting a permit, which is going to be a rubber stamp as far as I'm concerned, will just continue it. It's been awful.

The problem, as in many cases involving vulnerable workers, is that it's hard to find hard data in terms of how many workers work 60 hours. There is this incredibly

large underground economy too, that those of us who are out there at Jane and Wilson are well aware of.

Mr Kormos: I don't know if any of the people you work with work as chicken catchers in the large poultry farms.

Ms Rubio: No, none.

Mr Kormos: I've had occasion to talk—

Ms Rubio: I've had people work in slaughterhouses; not catching chickens in barns but actually slaughtering chickens. It was a 24-hour operation. That's one of the examples, actually, that I brought to you.

Mr Kormos: It makes Upton Sinclair read like a contemporary. It does. He wrote that book *The Jungle* back at the beginning of the 1900s.

Mr Arnott: I've caught chickens.

Mr Kormos: Then you know exactly what I'm talking about. It's incredible, difficult work.

I thank you. It's remarkable that all the participants today—well, the human resources professionals said they were neutral, self-identified as neutral. Of those who came from the business perspective, as well as those who came from the perspective of workers, not a single presenter today was advocating support for this bill, though perhaps for very different reasons.

Ms Rubio: I'm hardly neutral. I'll make that very clear.

Mr Kormos: Nor am I.

Ms Rubio: I have been working in this particular field for 26 years, so I think I know of what I speak.

Mr Kormos: Thank you kindly.

The Chair: Ms Rubio, just for my own information, you used the term "Chicken Little." In any of your discussions with Minister Bentley to date, has he ever used that term?

Ms Rubio: No, no, no.

The Chair: I think that's important.

Ms Rubio: It was Minister Stockwell. I want to make that clear. Every time we'd say, "This is going to happen," he would say, "Oh, you're like Chicken Little. The sky is falling, the sky is falling." No, Minister Bentley was always respectful and polite to us—

The Chair: I just want to get that on the record, because I do know the minister.

Ms Rubio: —even if we disagreed.

The Chair: Absolutely. That happens.

The Chair: Government side: a couple of quick questions?

Mr Flynn: As I read through your presentation and as I listened to you, what came across is that with a lack of enforcement it doesn't matter how good the rules are; if you're not enforcing them, it doesn't have an impact on the worker's life.

Ms Rubio: Yes.

Mr Flynn: So this bill calls for increased enforcement, some more strategic enforcement. We plan to get into the workplaces.

You're talking about us retaining the 60-hour workweek. Just so I'm clear—I want to make sure you understand what we're saying. Currently an employer

can compel you to work up to 60 hours a week, or if you can get an agreement he can compel you, and you're saying these agreements are sometimes reached under duress because there's no enforcement. What we're saying is that after 48 hours, that would take place. Is that not an improvement?

1800

Ms Rubio: The truth is that in all my 26 years, I've heard, "We're improving enforcement," and it hasn't happened. Why should it happen now?

Mr Ramal: Now we are in power.

Ms Rubio: Yes, but you were also in power in the 1980s and it didn't happen. Anyway, I really don't believe it. Part of the platform of the Liberals was to repeal—I didn't see in your platform that you were going to tinker with the way this consent was sought or that you were going to be granting permits. You were going to get rid of the 60-hour workweek. That has not happened. All you're doing is putting in a little obstacle.

I want to emphasize that it's a little obstacle. If I heard the minister correctly, all he says is that you can get the consent really quickly by electronic means, by fax, by mail. What kind of monitoring will that bring? I suspect, knowing the ministry and the bureaucracy as I do, it's going to be, "OK, another one, another one," with the rubber-stamping. There isn't going to be proper monitoring.

I mean, you still have a huge problem with collection of wages owed to workers. You've been in power for one year, and we haven't seen any major improvement in that either. When are you going to create the enforcement mechanisms?

Mr Flynn: Can we get back to the subject under discussion here?

Ms Rubio: Sure, but it's all related, sir.

Mr Flynn: We'll have to agree to disagree on, I think, a previous discussion.

You talked about overtime averaging and that you were opposed to it. My understanding of the proposed bill is that we are going back to the legislation that existed prior to the passage of ESA 2000, which would have been the previous laws in effect under the NDP government, under the Liberal government and under the Conservative government, that had been around since the early 1980s.

Ms Rubio: No. Overtime averaging for most people didn't exist.

Mr Flynn: What we're doing is bringing in overtime averaging—rather, returning it to the condition it was before, when it was based on a two-week period. That was in place under the New Democratic Party, the Liberal Party and the Conservative Party.

Ms Rubio: No. For most people, overtime was calculated weekly. Any hours worked after 44 were counted as overtime, until the Employment Standards Act, 2000. That's the way it was done. It was done weekly and it was done after 44 hours. That was that. I believe there were some sectors—

Mr Flynn: Could I have staff confirm that? I think that's important.

Mr Kormos: Let her finish her answer.

Mr Flynn: I have my answer, thank you. At some point, can we get staff—

Interjection.

The Chair: Do you want to finish?

Ms Rubio: I understand that for some sectors, particularly unionized sectors—I believe auto workers—there were times when there was overtime averaging.

Mr Kormos: Shame.

Mr Flynn: I'm trying to listen to the woman, Peter. Do you want to give her the floor? Thank you.

Ms Rubio: For most people—the people I work with, the people I represent—there was no overtime averaging. Overtime was calculated weekly. If you worked more than 44 hours, you were paid time and a half. That is the way we liked it.

Mr Flynn: Thank you. Could we have staff confirm that, just so we don't leave here with different opinions?

The Chair: Mr Fenson, you've made note of that?

Mr Flynn: I think staff are in the room who could confirm it right now. That's what I was going to say before we—

Ms Rubio: I didn't bring a copy of the old act, but of course I can make it available to the committee. I have one at work.

Mr Flynn: That's fine. We have some here.

The Chair: Ms Rubio, we thank you very much for your presentation today.

Ms Rubio: Thank you.

The Chair: We'll be back here tomorrow at 3:30 to commence clause-by-clause of Bill 63. Thank you very much for your co-operation.

The committee adjourned at 1805.

CONTENTS

Monday 29 November 2004

Subcommittee business	SP-397
Employment Standards Amendment Act (Hours of Work and Other Matters), 2004, Bill 63, <i>Mr Bentley</i> / Loi de 2004 modifiant la Loi sur les normes d'emploi (heures de travail et autres questions), projet de loi 63, <i>M. Bentley</i>	SP-398
Human Resources Professionals Association of Ontario.....	SP-398
Mr Paul Boniferro	
Employment Standards Working Group	SP-401
Ms Mary Gellatly	
Toronto Organizing for Fair Employment	SP-403
Ms Juana Berinstein	
Ontario Federation of Labour.....	SP-405
Mr Wayne Samuelson	
Mr Chris Schenk	
Justice for Campus Workers	SP-408
Mr Jonathan Medow	
Mr Matthew Hill	
Centre for Spanish-Speaking Peoples.....	SP-411
Ms Consuelo Rubio	

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président

Mr Jeff Leal (Peterborough L)

Vice-Chair / Vice-Président

Mr Khalil Ramal (London-Fanshawe L)

Mr Ted Arnott (Waterloo-Wellington PC)

Mr Ted Chudleigh (Halton PC)

Mr Kim Craitor (Niagara Falls L)

Mr Peter Fonseca (Mississauga East / Mississauga-Est L)

Mr Jeff Leal (Peterborough L)

Mr Rosario Marchese (Trinity-Spadina ND)

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot L)

Mr Khalil Ramal (London-Fanshawe L)

Ms Kathleen O. Wynne (Don Valley West / Don Valley-Ouest L)

Substitutions / Membres remplaçants

Mr Kevin Daniel Flynn (Oakville L)

Mr Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

Clerk / Greffière

Ms Anne Stokes

Staff / Personnel

Mr Avrum Fenson, research officer,
Research and Information Services