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Monday 25 April 2005

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des débats
(Hansard)**

Lundi 25 avril 2005

**Standing committee on
social policy**

Labour Relations Statute law
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**Comité permanent de
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Loi de 2005 modifiant des lois
concernant les relations
de travail

Chair: Mario G. Racco
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Monday 25 April 2005

Lundi 25 avril 2005

The committee met at 1536 in committee room 1.

**LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005**

**LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL**

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Loi modifiant des lois concernant les relations de travail.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome. I was stopped on the way coming here, so I was a few minutes late. I want to welcome all of you to our first meeting about Bill 144. We're going to have three days dedicated to this bill: today and tomorrow here, and then on Friday we're going to be in Kitchener, I believe, in Mrs. Witmer's riding. We are pleased you are here.

**PROVINCIAL BUILDING
AND CONSTRUCTION
TRADES COUNCIL OF ONTARIO**

The Chair: Our first deputation will be from the Provincial Building and Construction Trades Council of Ontario, Patrick Dillon. Welcome. We have 10 minutes you can use for your presentation. If there is any time left, there will be questions from the three parties. You may begin.

Mr. Patrick Dillon: I'm Patrick Dillon, business manager of the Provincial Building and Construction Trades Council of Ontario, representing 140 affiliated local unions in all disciplines of the construction industry in the province of Ontario. With me today is Richard Baxter, business manager of Local 50 of the International Union of Elevator Constructors and also president of the Ontario building trades. We will make comments today and will file our brief with the committee by Wednesday.

It is an honour to be here today, elected to speak on behalf of workers in the construction industry. In saying that, I caution the committee to be aware of those employers or employer association reps that may attempt to speak on behalf of construction workers. We have no problem with associations and/or employers speaking on their views of how legislation impacts on them as an employer.

The construction industry is unique. We have approximately 98,451 construction establishments in Ontario as per Stats Canada. Construction employers in most cases have multi-projects ongoing throughout the province and in different industries at the same time. For workers to organize their employer in the construction industry is a unique experience. The construction workforce in Ontario is made up of women; aboriginal workers; visible minorities; thousands of new immigrants, both legal and illegal; and as is common throughout the world, is dominated by men.

The exploitation of these construction workers should not be taken lightly. The labour laws that were in place in this province prior to the 1995-2003 reign of the Progressive Conservatives were adequate and had stood the test of time for 50 years. The old Ontario of labour relations stability in the workplace was replaced with gutting the Labour Relations Act based on a corporate agenda and accomplished without consultation with the stakeholders.

The amendments, as presented in Bill 144, are a good first step in achieving the balance that is needed in this province. More unionization of the construction workforce would create a much safer environment to work in. You as political leaders and we as labour leaders have a moral responsibility to ensure that workers have all the protection possible to ensure their safety. A safer workplace also means less costs for the employers of our industry to get passed on to owner-clients. A safer workplace is absolutely better for the overall economy.

The unionized construction industry is the leader in our province and in the country in apprenticeship and training. An example of what I'm speaking of is the high percentage of completion of apprenticeships in the unionized compulsory certified trades like the electrical trade. The unionized electrical apprenticeship completions are in the 87% to 94% range, while in the non-union sector it is from anywhere between 30% and 50%. This is a major expense to Ontario's economy.

There is no doubt that young people today, when seeking a career, are looking for stability. This legislation will aid the construction industry in creating that stability.

Commenting directly on Bill 144, and in no particular order:

Interim relief is necessary to stop rogue employers from causing delays around applications for certification.

We support this section even though we would have preferred interim relief to be expanded to other areas of the Labour Relations Act.

Remedial certification: These provisions are most important in moving toward a balanced Labour Relations Act. Employer interference in workers' attempts to join unions in the last few years has been nothing short of appalling.

It would seem apparent to me that all parties in politics or in unions that are concerned about workers' rights would have to support the above two provisions.

Card-based certification: As mentioned earlier, I made reference to the unique nature of the construction workplace. A non-union worker seeking to join a construction union in Ontario may find that his or her employer has employees in Red Lake, Sudbury, Toronto, Windsor, Ottawa and maybe places in between, and to certify that employer is no easy task. Bill 144 gives the construction worker some hope that their wishes to certify the employer could actually happen. Some unions and politicians are attacking these progressive reforms mostly because card-based certification was extended to the construction industry only. It would appear that some feel the baby should be thrown out with the bathwater. I would prefer to embrace the baby and look for other opportunities to pump fresh water into the system. The building trades would support that—do support it and will support it.

I draw to everyone's attention that this is not the first time construction has been dealt with separately. The provisions in the Employment Standards Act apply differently to industrial and service sector workplaces than they do to construction in a number of cases. There are approximately 40 sections in the Labour Relations Act that apply only to construction. Bill 69, which was brought in by the Conservatives in that eight-and-a-half or nine-year time frame, applied to construction only. Bill 31, project agreement legislation, applied to construction only. Bill 80 of the NDP era, directed at 14 international construction unions, applied to construction only.

I would ask the committee to discuss the issue of petitions in applications for certification. Our position is that petitions should not exist.

Residential arbitration mechanism for construction: Much could be said by construction unions about legislated bargaining rights being taken away; however, we support Bill 144 overall. If the bargaining rights in residential become a problem, we will seek the necessary changes at that time.

With that, I thank you for the opportunity. I don't know if there are questions or time for them.

The Chair: Yes, thank you. We have about four minutes, about a minute and a half each.

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I guess my question to Mr. Dillon would be as follows: As you know, in the last election Working Families was a project, a giant ad campaign, that was funded by the

building trades. I'd like to know how much money you spent fighting our government on behalf of the Liberals.

Mr. Dillon: I don't know the exact amount, but to narrow the Working Families campaign to the building trades is not factual. The teachers and the nurses in this province played a large part, along with the building trades, to fund the end to the Conservative reign.

Mrs. Witmer: The other question I have is, you say that construction is unique. I guess I'm wondering why you would want legislation that would discriminate against and marginalize your employees and not give them an opportunity for a secret ballot vote.

Mr. Dillon: I guess, Mrs. Witmer, if that was a fact, workers over the 50 years that that legislation was in place in the province of Ontario would have raised some concerns about that. It seems to me that when you ask me a question about how much money we spent on trying to get rid of your government in 2003, it was probably not a quarter of what the corporate sector spent in the years previous to 1995 to get rid of the NDP so that you could bastardize the Labour Relations Act. Workers were not asked what their opinion was on that.

Mr. Peter Kormos (Niagara Centre): Thank you, both of you, gentlemen. You know my views on the importance of the trade union movement and its contribution to a high-wage economy. If you want to witness what one reaps in low-wage economies, just go to places in the world where trade union movements have no role whatsoever. Heck, every time I'm on a talking-head television show with somebody who advocates lower minimum wages because it'll create jobs, I propose, "Why don't we reduce it to a buck fifty an hour and we can create that many more jobs? But they really won't make a pile of difference to the economy, will they?"

Thank you, kindly. I appreciate it, both of you.

Mr. Kim Craiton (Niagara Falls): Thank you very much for being here. I do have one question, just a very quick comment. In my riding, and maybe everywhere, we have the building trades and, being past president of the labour council and president of two unions, I worked closely with them.

What I was really interested in, though, if you don't mind commenting, was when you talked about the petitions. Could you just quickly go over that again?

Mr. Dillon: Yes. What has happened in the past is that when the employer finds out that there's a union drive on, maybe an application for certification has gone in, they will encourage employees to take a petition up and to say that they don't want the union in. Those things are very seldom started by a worker. They're usually pushed by the employer for selfish reasons.

The Chair: Mr. Dillon, thank you for your presentation. Thanks again for coming.

COALITION FOR DEMOCRATIC LABOUR RELATIONS

The Chair: The next one will be the Coalition for Democratic Labour Relations. There are a number of

individuals. If you can please take a seat. We also have 10 minutes in total for your presentation. Please start any time you're ready.

Ms. Diane Brisebois: We'd like to thank the committee for the opportunity to share our views and concerns today. Many of our coalition members are in the audience with us, and it should be noted that each organization will be appearing before the committee throughout the week.

Today, the coalition is represented by Judith Andrew from CFIB, Mark Baseggio of Open Shop Contractors Association, and myself, Diane Brisebois, Retail Council of Canada.

Allow me to give you a bit of information on the coalition itself. The Coalition for Democratic Labour Relations comprises 12 industry associations, representing over 100,000 small, medium and large businesses and roughly two million jobs in key sectors of Ontario's economy. It is our shared concern regarding the very negative effects of this proposed legislation which brought a very diverse, and often competing, group of companies together. We sincerely hope this brings home to the government the authenticity and depth of our concerns.

When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance in the workplace. Coalition members couldn't disagree more. We take issue with the way this bill threatens the fundamental principles of democracy by removing the democratic right of employees to vote on whether or not they choose a union and by threatening an employer's right to free speech.

Without major amendments, the coalition believes the bill will create uncertainty in the business community. Not only will it delay key decisions about investments and hiring, it is our view that ultimately decisions will be made to invest elsewhere. The potential loss of investment and job creation will erode the government's ability to invest in its priorities of health care and education. This couldn't come at a worse time, especially given the recently revised forecasts predicting slower economic growth for Ontario in 2005 and budget shortfalls, as we all know.

The coalition has worked collaboratively to develop proposed amendments to the legislation that will achieve the fairness and balance that the government has said this bill is intended to bring about. We are urging the committee to support the principles of democracy and to support our proposed amendments to Bill 144, which we have circulated to the committee.

I now would like to invite Judith.

1550

Ms. Judith Andrew: On the issue of remedial certification, as drafted, the legislation gives the labour relations board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. The government's public messaging is that this power would only be used as a last resort, but in

fact the legislation does not explicitly state this, nor does it explain what that means.

Employers, such as the ones my organization represents, who lack resources, who lack the legal background and experience, may actually find themselves unwittingly committing acts that result in the labour relations board certifying their employees—this without the employees having had any chance to express how they feel about being unionized.

If the government is determined to allow the Ontario Labour Relations Board to actually make this decision on certification in place of employees, the circumstances in which this power is to be used must be clearly set out in the law, and we recommend that this section of the bill be amended to set out the types of conduct that would trigger remedial certification; place the onus of proof on the applicant to prove that no other remedy exists other than to replace the employees' decision with the labour board's decision, and have that be a full, three-person panel of the board making that determination; and, finally, that in every case, employees are given at least one opportunity to cast a ballot and exercise their democratic right.

I'd also like to say a word about decertification posters. Our coalition's concern about the removal of decertification posters is not so much that it has to be removed, but rather that it erodes the employer's right to communicate with his or her employees. In fact, the legislation will effectively make it a violation for employers to tell employees about their own rights under the law.

Small-firm employees do not have the resources to hire expensive labour lawyers. They cannot get the information from the labour board, as the government has stated. Typically, it is very difficult for employees to find this information. We propose that this section of the bill be amended to remove the provision making it an offence to fail to remove the decertification posters and that language be added to clarify that the employer has the same rights to communicate as he or she always had.

We also have concerns with the interim reinstatement powers included in Bill 144. More detail about that is in our brief, but we recommend, in short, that this section be withdrawn.

I'd like to turn now to Mark Baseggio for card-based certification.

Mr. Mark Baseggio: As you are probably all aware, Bill 144 reintroduces card-based certification, stripping employees of their right to a democratic vote. The minister has branded this as a so-called balancing of the act. It exposes employees to a largely unregulated and unmonitored process, which in the end will surely end in litigation—first, the small business owners in your communities.

It's difficult to understand how a democratically elected official would strip his or her constituents of their right to vote. The minister has attempted to justify this action by asserting that the construction employers' workforce is largely very transient. Well, that's really

more typical of a unionized workforce, where there's a hiring hall situation. Members of our organization commonly have employees for five, 10 or 15 years. So we're not sure why the unions are afraid of votes, but apparently they are, and it's no excuse to take a vote away, because it is a more accurate representation of an employee's true wishes.

Next is the definition of "non-construction employer." The coalition is also recommending amendments to the definition of "non-construction employer." There are currently a number of employers in the province who are bound to collective agreements with construction trade unions, when it is clear they are not truly construction employers. This is discrimination against union versus non-union construction employers. With projects coming from the public purse, paid for by the very workers and business owners, you'd hope they would have equal access. Thank you.

Ms. Andrew: Just in terms of wrap-up, we commend our amendments, which are appended, to your attention. I'm sure we've almost used our time, but we do find it disturbing that on an issue as monumentally important as this one, so little time has been allocated to Ontarians to make representation on Bill 144. Our group represents 100,000 businesses; that's got to be a nanosecond per. In terms of lessening the damage from this legislation, we urge the committee to recommend the amendments that we've commended to you.

I'd just like to make a concluding comment. In this room of politicians, who yourselves are elected by a secret ballot process, we find it very disturbing that the government is so cavalier about getting rid of that cornerstone of democracy for others. We hope you will rethink that, because this is very serious.

The Chair: Mr. Kormos, half a minute, please.

Mr. Kormos: I appreciate your frustration, but you've spoken, oh, so effectively for your constituents. The fascinating dynamics of the debate around this bill are that there's a constituency like yours that wants to make it more difficult, in my view, for places to unionize. There's yet another group in the government that wants to extend card certification to the building trades. We endorse that proposition because, heck, we want to extend card certification to every worker in this province. I think unions are good for the workplace, good for the economy. Where I come from, just like Craitor, unions are good for small business, because if we didn't have unionized jobs and the good wages they pay, small business would be saying goodbye to their retail and service force. But I appreciate your point of view.

Ms. Brisebois: Mr. Chairman—

The Chair: No comments, please.

Ms. Brisebois: It's not a question. It's a speech; it's not a question. I just wanted clarification—

The Chair: Madame, please.

Mr. Flynn, we are really tight.

Mr. Kevin Daniel Flynn (Oakville): I understand that, and I appreciate the frustration you must have with not having enough time.

I was a little taken aback on the decertification posters comments you made, and I just wanted a brief comment on that. I've heard a few opinions on that. Some of the larger employers who had good relationships with their bargaining units found them to be a nuisance that poisoned a good existing relationship. Other people have come forward saying, "If you're putting up a decertification poster, why wouldn't you put up instructions explaining how you can certify yourself as well?" I wondered if there was any comment you had on that, or would you just like to leave the decertification posters up?

Ms. Andrew: Just on the last point about matching it with a poster on how to certify, I know the unions in this room and elsewhere are usually pretty good at knowing every nuance of the law and communicating that information in the organizing situation, so we would argue it's not really necessary. On the other hand, decertification is very difficult. If you look at the data, it rarely happens. It's like Hotel California: You get in, but it's very hard to get out.

The Chair: Mrs. Witmer, please.

Mrs. Witmer: Thank you very much. I would just give you the opportunity to respond to Mr. Kormos, if you wish.

The Chair: Would you?

Ms. Brisebois: Yes, thank you. I did not disagree with some of what Mr. Kormos said. I thought the most enlightened comment was that unions are good. In fact, we are not here to argue that unions are not good; we are here to argue that employees should have the democratic right to vote, which is a totally different issue.

The Chair: You can give to us in writing any information or any comments until the 29th of this month, so there's still time for you to provide information if you wish to. We thank you. We have to move to the next presentation.

Mr. Kormos: Thank you, folks. At some point we're going to have a meeting of the minds.

The Chair: Exactly.

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

The Chair: The next one is the Communications, Energy and Paperworkers Union of Canada. You also have 10 minutes for the total presentation. Please proceed.

Mr. Kormos: A former member of the Legislative Assembly.

The Chair: I apologize, and welcome.

Mr. Bob Huget: It's perfectly all right.

The Chair: You'll be on time, then.

Mr. Huget: It seems like so long ago.

Mr. Kormos: Doesn't it?

Mr. Bob Huget: It does indeed.

My name is Bob Huget. I'm administrative vice-president of the Communications, Energy and Paperworkers Union of Canada, more easily known as CEP.

On behalf of the over 50,000 CEP members in Ontario, I am pleased to have the opportunity to make a presentation to you today.

But having said that, I am also disappointed that this legislation is not subject, it would appear, to real, meaningful input or debate, especially since it's so flawed in one particular area, and that is the area that restores card-based certification for 4% of the Ontario work force. To talk a bit about Bill 144 in its current form, I have to go back in history and talk about card-based certification and what it was.

1600

Mike Harris and the Conservatives denied justice to thousands of working women and men across Ontario. Changes to the Ontario Labour Relations Act introduced by his Conservative government in Bill 7 took away the right for workers to have the union representation that they need and deserve. Workers in every corner of the province, in every type of workplace you can imagine, have been denied the right to make desperately needed improvements for themselves and their families.

The decline in union density and the massive reduction in union certifications can be directly linked to the changes of Bill 7, and in particular the removal of card-based certification. The previous Tory government, acting on behalf of its constituents—anti-union employers in the province—had exactly that in mind when they passed the bill.

To be clear, a vote every time on every application for certification simply does not result in democracy in the workplace, nor does it fairly and honestly represent the true wishes of the workers. Since 1950, the card-check system served the province well. Union density was higher, and twice as many certifications per year were granted. The true wishes and desires of the workers were protected, and they were fulfilling them.

Immediately following the passage of Bill 7, the workplace became a war zone on the days between the union application for certification and the vote. It is surprising to see how far some employers will go to defeat the union and deny the true wishes of the employees. We've been involved in organizing campaigns where plant managers are told that if the union wins its certification attempt, they will be fired. You wouldn't have to have too much imagination to figure out just exactly how far individuals under that kind of pressure will go to save their own jobs.

The employees and organizing campaigns are the victims of captive audience harassment all day, every day, with the union having no access. We have seen union supporters disciplined and fired without just cause. Employees are told that if the union wins, the workplace will close. Employees are told the union can only guarantee union dues and strikes. They are led to believe that the union could actually take them backwards, and that they could lose at the bargaining table. They are often and routinely lied to about the amount of union dues.

Employees working for the lowest wages in the worst of working conditions are the most vulnerable and the

most frightened. They often have so little in life, but if they lose even this particular bad job, it is everything, and all they have. That can be terrifying. The card-check system removes this horrible, unfair anti-union campaign from the process. The card-check certification restores justice and best represents the true wishes of the workers.

Premier McGuinty and his Liberal government had promised to undo the injustices imposed by the former Conservatives, and I put it to you that it's time to keep those promises. Bill 144, as it is proposed, corrects some injustices, to be clear, which we appreciate. But without card-check for all, the Liberal government will continue to impose the injustice that originated under the previous Conservative government.

If we could ask for just two improvements to Bill 144, number one would be card-check certification for every Ontario worker; number two would be legislation to make replacement workers against the law. This is not difficult to understand. There are so many fine examples in so many jurisdictions of anti-scab law, how it works, and the fairness and justice that flows from such a law: fewer strikes and lockouts; shorter strikes and lockouts; and much safer strikes and lockouts. Quebec is a fine example of how such law has worked for more than 25 years.

Bill 144, as proposed, is both discrimination and a human rights violation. How can it possibly be fair to offer card-check to construction workers, 4% of the workforce in this province, and not to all? This is also discrimination of the worst kind. It denies justice to the most vulnerable of Ontario workers. Denying card-check certification to the private sector denies justice to some of the worst-paid and poorly treated workers in this province. Immigrant workers and workplaces of mostly women are often found among those undesirable workplaces.

CEP is demanding that Premier McGuinty do the right thing and keep his promise to stop the discrimination and give card-check certification to all working people in Ontario, not just the few.

That's my presentation, Mr. Chairman. Thank you.

The Chair: Thank you very much. There are 30 seconds each. Mr. Flynn, please.

Mr. Flynn: Thank you, Mr. Huget. I thought we had a little bit more time, but just to be clear, then, so I understand, you're in favour of the interim relief, in favour of the remedial certification, in favour of taking down the decertification posters, but you would like to see card-based certification.

Mr. Huget: As I said in my presentation, there are those things, the things you've mentioned, frankly, which are constructive and steps in the right direction. Just the simple certification poster issue, in my experience, played havoc with sound workplaces that had sound labour relations up until that time. It pitted people against people. I think those kinds of things are important, but you missed the mark, sir. Fundamentally flawed legislation that does not restore rights to everyone is going to be a big problem.

Mr. Ted Arnott (Waterloo–Wellington): Thanks for coming in, Bob. Good to see you again.

Mr. Huget: Good to see you.

Mr. Arnott: Why do you think the government has responded to its commitment to extend card-based certification to construction unions but has not kept the promise to other unions?

Mr. Huget: To be fair, I'm not privy to those discussions. I can only speculate or imagine. But what I frankly don't understand, Mr. Arnott, is, what pressing need did someone in the government's benches recognize that it had to be addressed in this way? Where was the huge outcry that only 4% of the people in this province needed to be treated in a certain way, at the expense of all the rest?

Mr. Kormos: Thank you, sir, and that's without mentioning the need to restore anti-scab legislation and to guarantee that all workers, including agricultural workers, have the right to join a trade union. You know, your union and I are ad idem on this issue. Thank you very much for coming.

The Chair: Thank you again for coming. Have a nice day.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

The Chair: The next presentation is from the International Union of Operating Engineers, Local 793.

Mr. Gary O'Neill: Mr. Chairman, members of the committee, my name is Gary O'Neill. I'm the president of the International Union of Operating Engineers, Local 793. We represent 10,000 members, predominantly in the construction industry operating heavy equipment and cranes throughout the construction industry.

I have with me Bruce Price at the end, who is our legal counsel, and two recent members of the union. It's our goal to illustrate to you what the real world is out there when somebody exercises their right to join a union. They're going to share with you what happens in reality with what some people have put forth as a fair and democratic vote. I think it will show that it's not a fair and democratic vote when people are intimidated, threatened and fired for exercising that right. It completely destroys the free will of the other employees when that happens.

1610

We are in favour, obviously, of Bill 144 restoring the balance. Some have spoken previously that this is something new that has been brought forward, a whole new change. It was in place for many, many years and worked well in the industry.

I am going to, at this point, turn it over—we have with us Ron Belich and Glen Paul—and let them explain to you what happened when they chose to join the union.

Mr. Ron Belich: My name's Ron Belich. I belong to the 793 union. The union was trying to step into a company and make it unionized. A lot of people knew that I had things to do with the union, so all the employees

started asking me if it would be of benefit to them to join the union. Of course it would be of benefit to them to join the union, for the pension and the better workforce that they have, and safer work.

I do excavation, water and sewer. There's so much digging going on without trench boxes and stuff that it's just dangerous. We're digging holes and the owners are turning around and getting three, four guys to watch that the banks don't cave in. This is ridiculous.

So I said that we'd be better off going union and it'd be a safer environment to work in. The employees started thinking it over. Because I mentioned all this, the employer turned around and pulled in a general meeting of everybody who worked there. They handed out a letter stating that if the union would be voted in, the company would close the doors. Everybody would be out of a job.

I usually travel with one other person going into the job site. That day, going into work, there were seven people in the same vehicle asking me, "Can they do this or can't they?" I said, "No, they can't."

It was starting to change over to where everybody wanted to get into the union. The employer was threatening everybody that they'd be out of a job, and they can't do that. It's just that the work environment had to be safer. That was the main thing.

So then the employer was catching wind that the vote was changing. The following Friday, they picked me up off the job. They said they had a very important matter to discuss with me. They took me back to the office. They said, "We understand that you're very strong with the union and you want the company to join the union and you're talking to the boys and the vote is changing." I said, "The vote could be changing; I'm not sure 100%." They said, "Well, we don't need anybody to push the union here, we don't need to be union. Dismissed. You're laid off; shortage of work." To this day still they're working on that exact same project that I was on and they pulled me off of. So the influence there, what they do with people, is just phenomenal.

Mr. Glen Paul: Hi. My name's Glen Paul. I joined operating engineers 793 at the beginning of September 2004. I signed a union card when the organizing campaign began. The organizing campaign—I'm nervous here—anyway, I'll just go off the top of my head here.

I was approached by the union rep to sign ballots. We all signed ballots; there were three of us. I was approached by the—this is bad.

The Chair: Talk to us.

Ms. Kathleen O. Wynne (Don Valley West): We're listening.

Mr. Paul: Go ahead.

Mr. O'Neill: What happened in Glen's situation is, he signed the card in support of the union and told his co-workers that he thought the union would be the best environment for them. Shortly thereafter his employer accused him of stealing diesel fuel some two months prior and said, "I give you two choices: either you quit or you're fired." He said to the employer, "I will not quit

because I didn't steal diesel fuel," and he told him that he was fired.

It was clear to himself and the other employees that he was one of the ones who was a leader in wanting to have the union in place.

Now Bruce is going to touch on a couple of areas.

Mr. Bruce Price: Thanks, Gary. These stories of employer misconduct that you've just heard aren't unusual. Unfortunately, they're not all that uncommon. We believe that Bill 144 will restore balance and fairness to the Labour Relations Act and will provide both an effective deterrent and meaningful remedies, in the form of remedial certification and substantive interim orders, for such employer misconduct. Moreover, we believe that the return of card-based certification will not only help to minimize employer interference in union organizing campaigns but will produce results that are highly democratic in nature.

We think that critics of this legislation are wrong if they suggest that the changes brought about by Bill 144 will harm Ontario's economy. Those claims simply belie the history of labour relations legislation in this province. For approximately 50 years, the Labour Relations Act had, in one form or another, provisions dealing with remedial certification and card-based certification. That's clearly a significant period of time, and those provisions coexisted with periods of time during which there were undeniable prosperity and productivity gains in the province. In our view, this legislation, by promoting fairness and harmonious relations among workers and employers, will lead to increased prosperity in the province.

Critics also suggest that a secret ballot vote, in every case, is the most democratic form of employee choice and that the reintroduction of card-based certification is somehow an affront to employee choice and workplace democracy. We support the return of card-based certification for at least three important reasons.

First, card-based certification responds to the uniqueness of the construction industry, as Mr. Dillon highlighted earlier. Ours is an industry that is characterized by workplaces and workforces that are often in a constant state of flux. Under those circumstances, it can be difficult to ascertain employees' wishes. Card-based certification responds to that reality of life in the construction industry.

Second, card-based certification minimizes employer interference in organizing campaigns and thereby helps to ensure that employee wishes are heard.

Finally, since card-based certification will require the union to achieve 55% support among the entire bargaining unit, as opposed to a simple majority among those who show up to vote, as under the current legislation, card-based certification is really often more democratic than the current "vote in every case" system. It ensures that there's going to be broad-based support among those in the bargaining unit.

A secret ballot vote in every case simply does not work in all situations. Where an employer has dismissed union supporters or threatened to close the business if

unionized, as in Mr. Belich's case, then the choice for employees becomes a choice between a job and union representation, and we all know how that's going to turn out. Remedial certification responds to these situations and fundamentally recognizes that in certain situations, the true wishes of employees cannot be determined through a vote. Accordingly, Local 793 supports Bill 144 in its entirety, and we eagerly anticipate its passage into law.

The Chair: Thank you for both presentations, gentleman.

1620

RETAIL COUNCIL OF CANADA

The Chair: We'll move on to the next presentation, from the Retail Council of Canada. One of the reasons we are tight with time is that if we spend too much time on one presentation, we're taking away from the others. Otherwise, it would be more flexible.

Mr. Kormos: You're doing a fine job, Chair.

The Chair: If Mr. Kormos says so, I'm very happy.

Please proceed any time you're ready. You have 10 minutes.

Ms. Diane Brisebois: My name is Diane Brisebois. I'm the president and CEO of the Retail Council of Canada. Thank you for the opportunity to appear again today. I will try to move through the presentation quickly so that we do have some opportunity for questions. I'm sure there will be some.

RCC has been the voice of retail since 1963. Our 9,000 members represent all retail formats, including mass merchants, independent merchants, specialty stores and on-line merchants. Approximately 90% of our members are small independent retailers, and over 40% of our membership is based in Ontario. In Ontario alone, the retail sector contributes almost \$129 billion annually to the economy, representing 5% of the provincial GDP.

Despite its significant size and scope, retail really is dominated by small business. The majority of our members employ fewer than four people. Approximately 70% of the retail sector has sales of less than half a million dollars a year, and 89% of the retail sector has sales of less than \$2 million a year. So it is really small business we're talking about. Even though in the past we've often put the spotlight on very large retailers, our sector is dominated by small business. Retail is also Ontario's second-largest employer, with over 760,000 employees in Ontario.

With respect to Bill 144, RCC and its members have serious concerns about the impact that this legislation will have on democracy in the workplace and on the provincial economy. When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance, as mentioned in the first presentation. Obviously, RCC and its members could not disagree more.

Retailers are also deeply worried by the virtually unanimous opposition of the rest of the business community to Bill 144 and by their warnings that it will cause

a loss of jobs and investment in other sectors. This is extremely important for members to understand. This does not come from big business; this comes from all business sectors in this province.

Retailing is a consumer service. The demand for merchants' services derives from the needs and desires of people who mostly earn their living in other parts of the economy. As a result, the trade is heavily dependent on the health and growth of the economy as a whole for its own success. If Bill 144 has even a fraction of the harmful effects suggested by other businesses in this province, the impact on the retail trade will be very serious.

Moreover, we have begun to hear anecdotal evidence from several of our members that they are reviewing investment decisions based on the negative effect of Bill 144. With the potential to delay key decisions about investment and hiring, this bill could not come at a worse time, especially given the recently revised forecasts predicting slower economic growth for Ontario in 2005. RCC expects sales performance in Ontario to grow slowly this year, at a rate lagging behind the rest of the country, continuing a trend set in 2004.

In addition to lagging sales, Ontario retailers are struggling to deal with a rash of government initiatives that are hindering their ability to remain competitive. With the anticipated impact of Bill 144, this legislation truly could not come at a worse time for retailers in Ontario.

To provide the clarity and certainty that the business community requires to grow, invest and create jobs, RCC has worked as a member of the coalition that presented before you a moment ago. We have presented amendments, which are attached to our presentation, and we hope you will pay attention to them.

Now to our specific concerns and recommendations.

As drafted, Bill 144 gives the Labour Relations Board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. While public messaging by the government has stated that this power would only be used as a last resort, the legislation does not explicitly state this, nor does it explain what this means. How interesting. Instead, employers who lack resources, legal background and experience—and most of them do; they are primarily small independent businesses—may find themselves unwittingly committing acts that result in the Ontario Labour Relations Board certifying their employees, without employees having had a chance to express how they feel about being unionized. How fascinating.

There's another side of the story. If the government is determined to allow the Ontario Labour Relations Board to make the decision about certification in place of employees, the circumstances under which this power will be used must be clearly set out in the law. This is fundamental.

We recommend that this section of the bill be amended to set out the types of conduct that would attract remedial certification, provide that a full, three-person

panel of the board must agree to remedial certification before it can be ordered, and ensure in every case that employees are given at least one opportunity to cast a ballot and exercise the democratic right to express their views.

We are further concerned about the bill's proposal to give the labour board the power to reinstate terminated workers while the issue of whether or not there was just cause for the dismissal is being litigated and before their employer is ever found to have done anything wrong. We are concerned that there is no recourse for an employer if the board finds that the employer did nothing wrong in the first place. If this is not amended, there is nothing to stop unions from filing unsubstantiated claims of dismissal regardless of the merits of the case, creating a climate where employers are hesitant to run their businesses for fear of having to deal with costly litigation arising from legitimate business decisions. RCC is therefore recommending that this section be withdrawn.

We also have concerns about restoring card-based certification and are calling for the removal of this provision from the legislation. We are proposing an amendment to the provisions dealing with decertification posters to protect the rights of employers to free speech, as well as an amendment to the Labour Relations Act itself regarding the definition of "non-construction employer."

In conclusion, RCC and its thousands of members have numerous concerns about this bill, particularly the provisions permitting remedial certification. Amendments to the legislation are needed to provide the clarity and certainty that unions, employees and employers all need in order to know what is expected of them.

The Chair: There is 30 seconds each. Ms. Witmer.

Ms. Witmer: Thank you very much for your presentation. What concerns me is the fact that the economy does seem to be on a decline and we're probably going to see a loss of jobs. What is there within this bill that would give people in your sector the most concern? I think I heard you say it was remedial certification.

Ms. Brisebois: There are several, but if we were to pinpoint one specifically, there's no question that remedial certification is a great concern. Basically, what our members, small, medium and large, cannot understand is a government thinking that taking away the right to vote is democratic. When we speak to our small members in all the regions of the province, they just shake their heads. They can't believe it.

The Chair: Mr. Kormos, please.

Mr. Kormos: Thank you kindly. Card-based certification goes back to Leslie Frost, surely one of the most unradical Premiers that the province has ever had, and we had card-based certification through till Bill 7, after the 1995 election. Where were the mom-and-pop stores that were unionized up until 1995? My grandparents were retailers and my parents were small business people. I worked in the store, like most kids did, from when I was 10 or 11 years old. I also ran a small business as a small-town lawyer. Prior to 1995, where was the orgy of union-

ization of small mom-and-pop, three- or four- or five-employee operations?

Ms. Brisebois: That was obviously not a question.

Mr. Kormos: It was a question.

The Chair: Thank you. Ms. Wynne?

Ms. Wynne: I'm just trying to understand your concern about remedial certification. My understanding is that if an employer contravenes the act, then there will be a remedy put in place. I heard you say in your previous presentation, with the other organization, that you didn't fundamentally have a problem with employees organizing, so could you just clarify? I'm confused. If you don't have a problem with a union per se, then how can you have a problem with there being a remedy if an employer obstructs an organizing drive?

Ms. Brisebois: I'm sorry. I should have introduced—

The Chair: The time is over: 10 seconds, please.

Mr. Doug DeRabbie: Ultimately, our concern is that the labour board will have too much discretionary power, so we're just looking for some clarity and for some certainty as to when the board can and cannot use its power.

The Chair: Thank you for the presentation.

I remind the members that when I say 30 seconds, that includes both the question and the answer. We keep on going over a minute, instead of 30 seconds. Please keep that in mind.

1630

UNITED FOOD AND COMMERCIAL WORKERS CANADA

The Chair: The next presentation is the United Food and Commercial Workers Canada. Please proceed, sir.

Mr. Bob Linton: Mr. Chairman and members of the committee, my name is Bob Linton. I'm the national communications coordinator for UFCW Canada. On behalf of the more than 100,000 members of UFCW Canada who work and live in Ontario, I would like to thank you for allowing me the opportunity to appear before you today and to share the concerns of our membership with respect to Bill 144.

Before I begin, however, I would like to take a few moments to give you some background about UFCW Canada and its membership.

With more than 230,000 members in Canada, of whom more than 100,000 are located in Ontario, UFCW Canada is one of the largest public sector unions in the country. Our members are your neighbours. They are the grocery clerk or cashier you've gotten to know. They work in meat-packing plants and hotels. Some work in nursing homes, car rental agencies and many other places. Some work as security guards, while others work in your local Beer Store. Our members are the people who make Maple Leaf hot dogs. Others make Heinz ketchup. They are working men and women. They're not rich. They don't have glamorous jobs, but by being in a unionized workplace they are able to enrich their quality of life and that of their families.

By giving you this brief description of our members and where they work, I hope you now understand that many of our members are the types of people who would be discriminated against if Bill 144 becomes law in its current form.

Approximately 50% of UFCW Canada's membership is women. The number of women in our union, combined with workers who are visible minorities, new Canadians and younger workers, clearly represents today's Canadian workforce.

Our members are lucky, however. They have been fortunate enough to obtain a job in a unionized environment. But what about the thousands of other workers in Ontario that Bill 144 discriminates against merely because they are women, a visible minority, a new Canadian or a younger worker?

For over 40 years, card-based certification was a key feature of the Ontario labour relations system. The card-based system was in effect and endorsed by Conservative, Liberal and NDP governments alike. The system is also prevalent in most Canadian jurisdictions, ensuring effective freedom of association.

The mandatory vote system, which was brought in by the former Conservative government with no independent study or consultation, now leaves employees vulnerable to coercion by employers and unfair labour practices, so they cannot fully and freely express their true wishes about becoming union members.

For the current government to restore card-based certification to only the construction sector simply does not make sense. It is discriminatory to the majority of workers in the province. Except for the construction sector, all other sectors of the economy will be subject to a vote system which will take place on their employer's property, where the employer has a daily opportunity to influence employees. Employers also have information about their employees, including addresses and telephone numbers. With their having that information and with the vote held on employer property, it clearly leaves an unbalanced system, with a huge advantage for an employer to skew the results of a representation vote.

This advantage under the vote-based system has been proven in several independent studies, two of which I would like to cite. The first is that of Professor Sara Slinn of Queen's University law school. Professor Slinn found that the overall proportion of certification applications is lower under the vote system, and it is particularly in the low-wage service and contingent worker sectors that there is a significant decline in certification applications. Slinn states that the former Conservative government's "Bill 7 had a disparately negative effect on relatively weaker employees, such that employees who may most benefit from unionization are less able to access union representation." This is clearly a discriminatory practice against women, visible minorities, youth and new Canadians who, by and large, make up that group of low-wage earners.

A 1991 study by BC Labour Relations Board Chair Stan Lanyon and Robert Edwards backs up Slinn's

findings. They stated, “The use of representation votes as a condition of certification does not further democratic rights but instead serves the interests of the employer who would wish to influence his employees’ decision on the question of union representation.”

In conclusion, I would like to say that although the government has proposed positive changes to the Labour Relations Act with the elimination of the workplace decertification poster and giving back to the OLRB the power to certify a union if there has been found to be undue interference or influence applied by an employer during an organizing drive, Bill 144 should be best looked upon for what is missing in the bill.

This government appears content to go down the path of the previous Conservative government by continuing to deny agricultural workers the right to freedom of association to join a union and bargain collectively. Furthermore, they have yet to ensure that those workers are covered under the Occupational Health and Safety Act.

The most glaring omission in the proposed legislation, however, is the omission of card-based certification in all sectors of the economy except the construction sector. Given the changing demographics of the workplace in Ontario, this is an issue that will not go away unless this discriminatory practice is ended.

I would like to end with a quote from the Honourable Leona Dombrowsky, Acting Premier, in the Legislature on April 21 this year. When questioned about the need for a public inquiry with respect to the linkage between then Premier Mike Harris’s office and a decertification drive at a Wal-Mart store in Windsor 10 years ago, Ms. Dombrowsky stated, “I would suggest that for a government such as ours, which is committed to balance, fairness and openness, it’s totally consistent with our desire to operate in a fair and balanced way to want to have all of the information before us.”

I would suggest that after these consultations, the government will have ample evidence to do the right thing and bring back card certification to all workplace sectors.

The Chair: Thirty seconds each. Mr. Kormos.

Mr. Kormos: Tell us quickly a little bit more about the Wal-Mart scenario you referred to: the dirty dealing, the slush fund and the totally illegal activities.

Mr. Linton: With respect to what happened in that union certification, it came out after the certification drive that the Premier’s office had paid two people to come from that Wal-Mart store to the passing of Bill 7 and the elimination of section 11 of the Labour Relations Act. They were each paid \$500 by the Premier’s office, their airline tickets were paid for by the Premier’s office and their hotel rooms were paid for by the Premier’s office. Later on, they received a letter from the Premier, which was sent to their store, congratulating them on taking a stand. So that’s—

Mr. Kormos: The slush fund.

The Chair: Thank you. Mr. Flynn.

Mr. Flynn: Just so I’m clear: The interim relief and the remedial certification are things that would go some

way toward solving some of the problems you’ve experienced in the past.

Mr. Linton: Absolutely. When an employee is terminated, whether or not they are participating in union activity, it puts a damper on an organizing drive, if people want to share those wishes. I can give you an example, and it doesn’t even have to be with respect to that. We have a situation in UFCW with respect to Wal-Mart in Jonquière, Quebec. We had an organizing drive, and if we had had card-based certification, clearly we would have had over 55%. We had over 55% of those people sign union cards. As soon as Wal-Mart announced that they were closing their only unionized store in North America, those people decided, “I don’t want my store to close,” and they voted against the union.

Mr. Arnott: In a provincial election, voters are allowed to express their opinion through a secret-ballot vote, free from intimidation or any kind of oppression. Why is that not good enough for workplaces?

Mr. Linton: For one thing, do we have secret ballot votes during a provincial or federal election where the government is running the vote? It is a non-biased system, and that’s what we’re asking for. But clearly, when you have more than 55% of the people in there expressing their desire to join a union, it eliminates the problem that there might be undue influence.

The Chair: Thank you very much for your presentation.

UNITED STEELWORKERS OF AMERICA

The Chair: The United Steelworkers of America is next.

Good afternoon. Please start any time you’re ready. There are 10 minutes in total, and there are two of you.

Mr. Najib Soufian: I will just speak for five minutes, and Judy Rebeck is going to speak for the other five minutes.

As a black person—as you can see, I don’t hide my colour; I come from Africa—when I look into the room, I don’t think it’s representative of Ontario. Ontario doesn’t look like this room. Ontario looks very diverse and very unique. We know that Ontario is the best, most diverse place in the whole world today. In this country, what I expected today was a little better than the legislation being proposed, Bill 144.

Just to share a little experience of my own, I came to this country 23 years ago and settled in Toronto. I’ve lived in Toronto and worked for one employer for the last 23 years, and I am still working there. My name is Najib Soufian. I live in Vaughan and work in Toronto. As a person of colour, an immigrant coming from Africa and living and working in Toronto for over 20 years, I have seen all kinds of barriers in attempting to advance my life in Canada, let alone in achieving better working conditions for myself and my family.

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Being a black worker, I know first-hand that it’s hard even to find a place to live in Toronto without the help of

a union behind me. I also know what unions can bring to workers, such as equality in society and in workplaces. Before a union was organized at my workplace, we had no benefits, no wage increases, no job security, no pension, no life insurance and absolutely no say in the decision-making process in the workplace. Today, with a union behind me, not only is the company prospering, but so are my co-workers and myself.

If you are telling me today that all other visible minority groups have equal opportunities like everyone else in Ontario, you must be joking, because they don't. Let's get serious. The federal government, in 2005, which is this year, has six points toward eliminating racism in our society across Canada. Bill 144 is racism at its worse. You have given the opportunity to a select group of white men in society. If you provide a big barrier to unorganized visible minority groups in Ontario advancing in life, as Bill 144 does, it comes very short of delivering equality and fairness of justice.

Stats Canada shows, in fact, that visible minorities have better wages and better benefits where they have a union in the workplace. By not extending Bill 144 to include those who are most vulnerable in society, such as visible minorities and women, the legislation is discriminatory, racist and sexist. As the government of the day—I'm talking to the Liberal government of Ontario—it is your duty and moral obligation to protect the vulnerable. What I would like to say is, what's good for you is good for me. For every one of us, unions bring a better life, better insurance and job security.

As a casual organizer at Steelworkers, I have two plants organized in Toronto: one in Scarborough and one in North York. In Scarborough, it's an organization called Rochman Universal Doors, whose workers are 95% to 100% of Sri Lankan background, and 95% of them don't speak English. We had to find translators to go to their doors and tell them about Mike Harris's Bill 7: the 60-hour workweek and being forced to work without overtime. In the last four years, after the union organized, they're getting paid overtime and have better living conditions and a safe workplace.

If unions are good for the rest of Canadians and for the police, the doctors—every sector in society—they're good for new immigrants and new Canadians. Please don't take that away from us.

The Chair: Thank you. The next, please?

Applause.

The Chair: Please, Mr. Kormos.

Mr. Kormos: I was applauding.

Ms. Judy Rebick: My name is Judy Rebick. I'm not a member of the United Steelworkers of America, but they asked me to appear as an expert in women's equality and also in democracy. I just finished a book on the history of the women's movement, and my previous book was called *Imagine Democracy*, so I have expertise in both fields.

What I want to say, first of all, is a fact that isn't well known, which is that the number one factor in reducing the wage gap is unionization. That is, a woman who is

unionized is more likely to make much closer to a male wage than any other factor, including education. Unionization is a critical factor in women's economic equality.

Secondly, the pay equity legislation, which our previous Liberal government brought in, has made a huge difference in women's wage levels only in the unionized sector. We've seen over the last 10 years—it wasn't meant to be that way, but in effect the only women who have the power to organize to achieve pay equity are in unionized sectors. So in both factors, unionization is critical to women's economic equality.

So now you bring in this Bill 144, and restrict it to one of the most male-dominated work sectors. Construction work is almost entirely white male. It's extraordinary. The only sector I know of that's more male-dominated than the construction sector is the firefighters, and they're getting better. The construction sector is not getting better. What you're doing, in effect, with Bill 144 is producing a bill that discriminates against women, and I believe it would not stand up to a charter challenge. If this bill was on the books at the time the charter was brought in—and we're at the 20th anniversary of the charter, also brought in by a Liberal government—it would be thrown out under the charter when you did the review of your legislation. It's patently discriminatory.

You must extend this bill to all sectors if it's not going to be discriminatory. Otherwise, you're passing a bill that is discriminatory against women and against minorities, as my colleague has said. I really urge you—I'm going to stop early because I'd like to be able to answer questions—to send this bill back. If you believe—and I believe—that card-check is the right way to go for the construction industry, then let's expand it to the whole of the workforce. That's what we need in this province, and I hope that that's what this committee will do.

The Chair: Thank you. We have 30 seconds each. Ms. Wynne?

Ms. Wynne: Thank you, Judy, and thank you very much, both of you, for being here.

I understand your point about card-based certification. I just want to ask about the other pieces of the bill: the remedial certification, the decertification posters, the interim reinstatement. Can you just comment on those in terms of their benefit to workers?

Ms. Rebick: The message I want to bring here is that anything that makes it easier to unionize is a benefit to women's equality, so anything that makes it easier to decertify is not.

Mr. Arnott: Ms. Rebick, thank you very much for your presentation; I appreciate it. There isn't a lot of time, but I would just like to ask you as well, what is wrong with having a secret ballot vote for a union certification decision?

Ms. Rebick: The thing that's wrong is that it's not like—I heard you talk earlier about the secret ballot in voting. With a secret ballot in voting, I don't have to do it in front of my boss. Basically, the employer, who has all the power in the workplace when there's no union, has time to intimidate employees. That's the problem, and they use that time.

Mr. Arnott: But it's a secret ballot.

The Chair: Mr. Kormos?

Mr. Kormos: Go ahead, brother.

Mr. Soufian: I just want to add to that point that there is something wrong with that. It opened the door. The remedy part that the member was asking about—basically, to remedy means that something is wrong. If there is nothing wrong in the first place in a card-based certification, why would you need the remedy in the first place? Do we have to wait until somebody attacks and opens the door, and then we're going to take you after the emergency situation? That opened the door for so many things, particularly for people like me who don't speak better English, and people who don't speak English at all. It will be easier to make them choose their livelihood or the union: What's it going to be? I tell you one thing, as an immigrant: I'd rather go with my employer than lose my job.

The Chair: Thank you very much for your presentation. We're right on time on this one.

1650

OPEN SHOP CONTRACTORS ASSOCIATION

The Chair: The next one will be Open Shop Contractors Association, please.

Mr. Arthur Potts: Thank you, Mr. Racco and members of the committee. Thank you for this opportunity to speak. My name—

The Chair: We have a meeting going here. Can we please have any other meetings outside?

Please proceed, sir.

Mr. Potts: I come from a large family. I'm used to being ignored.

Ms. Wynne: We're listening.

Mr. Potts: Thank you very much, Ms. Wynne.

My name is Arthur Potts. I'm a vice-president of the Open Shop Contractors Association. Our president, Phil Besseling, was listed to speak here as well. He's going to see you on Friday in Kitchener. Mark Baseggio was here earlier speaking with the Coalition of Democratic Labour Relations.

Our association was formed in about 1990 by a group of Niagara Peninsula contractors who were upset about the fact that they were being refused opportunities to bid on jobs because their employees had not freely chosen to join a union or a particular trade union. We believe that employees' choice of whether to join a union or not—and it is the employees' choice—should not be a determining factor in awarding contracts, especially where public money is being used. As taxpayers, open shop contractors understandably do not want their hard-earned tax dollars being used for construction jobs that only benefit their competitors.

We now represent contractors across the GTA and the province of Ontario. We've grown to be really the only credible voice of the nearly 70% of the construction industry that is not unionized. Notwithstanding that a

number of our members do have collective bargaining relationships with trade unions, they just do not believe that should be a deciding factor in whether they should be able to contract or bid on certain jobs.

We will address three areas of the bill that we believe need fixing from construction's perspective. We are members of the coalition you heard from earlier, and we support their point of view in all the issues they've brought forward already. We're going to address card-based certification—we've heard a lot of discussion about that so far—the “non-construction employer” definition, which was touched on, and another area, which I'm going to call, “Who gets counted?”

We're going to be asking this committee to propose amendments to Bill 144 that (1) guarantee a vote in every certification application, (2) will remove municipalities from the construction sections of the Labour Relations Act, and (3) will ensure that all employees on a contractor's payroll have an opportunity to vote or be counted in membership cards counted in a certification application.

On the card-based certification, much of the debate we've heard here today argues that because the card-based certification system has been used since the Labour Relations Act was founded, there will be few consequences by reintroducing it. If it was good enough for every Ontario government until the last administration, then, the argument is, it can be effectively used now. This is an extremely false premise. Times have changed. The card-based certification process has become extremely complex, costly and cumbersome in the province of Ontario, and this is precisely why it was removed.

A card-based system relies on an employee's right to be able to change his or her mind by signing a petition withdrawing their support. You heard Mr. Dillon talk a bit about the petitions earlier on. This is an absolutely critical piece of a card-based certification program. Certifications in Ontario used to get tied up for months debating the legitimacy of a petition, and then the union would inevitably bring a counter-petition. The certification process dragged on interminably and was very, very costly.

We predict with confidence that reinstating a card-based system will result in the revival and the excessive use of petitions and counter-petitions and lead to very acrimonious labour board proceedings, which won't benefit any of the parties, including the government. All these issues around petitions were completely eliminated by a representation vote in every case, and the fact that the vote was a quick, expedited vote, within five days of an application, gave the employer absolutely no time to mount any kind of credible campaign. It could hardly be described as a war on the employees, as we've heard it characterized here. With an expedited vote, these issues go away. We can deal with the thing.

If, in fact, unions are not winning as many applications as they once were, it has nothing to do with the process; it has to do with the fact that they don't have the support. Times are changing. They just don't have the

support they may once have had, and I'm not going to argue the demographics of why that is.

We also have the concern that a threshold of 55% for a card-based vote is too low. If the union is going to rely on card-based evidence, which is simply not as reliable as a secret ballot vote, then a much higher threshold, such as is used in other provinces, is appropriate. I would draw your attention to the Manitoba NDP government. When they reinstated, they raised the level to 65% to at least demonstrate the true wishes of the employee.

I also want to talk about the "non-construction employer" definition. This matter is not specifically addressed in Bill 144, but it should have been. Twice before, the Legislature of this province has made amendments to the Labour Relations Act, defining a "non-construction employer." It was an attempt to remove municipalities, school boards, banks and retailers from the construction sections of the Labour Relations Act. For the most part, employers, who had been caught up in what is best described as a technical loophole in the old act, had been successful in terminating their bargaining units with construction trade unions, where they clearly did not belong.

However, the labour board has very narrowly interpreted the current definition of "non-construction employer" such that only two municipalities and just a few other employers in the province continue to be stuck with this kind of position. It has created such an incredibly unbalanced, unlevel playing field for two municipalities that they can't tender contracts on the same footing as other municipalities in the province. These employers are not construction contractors. They are the owners of the construction, and they contract out the work to construction companies. They do not belong to or participate in the construction sector bargaining tables. They do not bid on performed construction work for others. They should simply not be covered by the act.

Take, for instance, a situation in Sault Ste. Marie. They went out on a pre-qualification bid for a significant upgrade to a water treatment plant, and they could not get a single contractor to come forward and respond to their pre-qualification tender. This is because of the restrictive tendering they face. In Mississauga, where they do not have restrictions, during a similar pre-qualification process, many contractors came forward. Of the five contractors who were pre-qualified to bid for this very important work, not one of them is eligible, due to the restrictions, to work in Sault Ste. Marie.

Similarly, in the city of Toronto, it's becoming increasingly more difficult for the city to find contractors who have all the requisite collective agreements to bid on and perform the work required. We know this is costing the city of Toronto tens of millions of dollars a year, because they are not getting enough contractors to bid on the jobs to ensure that they get the best prices from the best contractors available.

It's also extremely unfair. You'll recall that when the city of Toronto amalgamated, hundreds of contractors representing thousands of employees who'd made their

living working for Etobicoke, North York and Scarborough were suddenly told, "You need not bid on city work," because they'd inherited the old restrictions from Metro in the city of Toronto. These contractors had to go off and rethink their entire business to find other work.

We believe it's a simple and very necessary fix. We ask this committee to make the changes required to the definition of "non-construction employer" to allow these organizations to terminate their bargaining relations with construction trade unions.

The last item we haven't heard anything about so far, but I think it's extremely apropos to the discussions we're having: Who gets counted? Bill 144 proposes a new section 128.1 to deal with an application for certification without a vote; i.e., the membership-card-evidence certification.

The section codifies a practice that has developed over the years at the labour board that we believe is fundamentally undemocratic and should be changed rather than entrenched in the legislation. When a trade union applied for certification in the construction sector, the board has ruled that only employees employed on the day of the application are considered for the purposes of counting membership evidence and get the opportunity to vote. This means that if a contractor has 10 employees working one day and two the next, and the trade union chooses the second day to make an application, only those two employees get the chance to vote and only those two employees' cards are counted. We think this is fundamentally wrong. Even if all 10 of the employees were to work the following day, it's still just those two employees who get to choose.

Open shop contractors have a very stable base of workers. These are the ones who will be disenfranchised if you take away their vote and if you don't allow them to vote in a situation like that.

We would ask that significant changes be made to Bill 144. Our three requests are that you not reinstate card-based certification, that you amend the definition of a "non-construction employer," and that all workers on an employer's payroll should be allowed to have their membership card evidence counted and the chance to vote on an application.

The Chair: Thank you for your presentation. There's no time for questioning

1700

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair: We'll move on to the next presentation, the Ontario Secondary School Teachers' Federation.

Mr. Ken Coran: Thank you, Chair. Rhonda Kimberley-Young, our president, sends her regrets. She's in Ottawa today, so I'm substituting for her.

Our organization, the Ontario Secondary School Teachers' Federation, represents approximately 50,000 members across Ontario. They include public high school teachers, occasional teachers, educational assistants, con-

tinuing education teachers and instructors, psychologists, secretaries, speech-language pathologists, social workers, plant support personnel, attendance counsellors and many others in education.

I would also like to take this opportunity to thank the committee for allowing me this time to comment on Bill 144, the Labour Relations Statute Law Amendment Act. As you are all aware, the intent of Bill 144, according to the government, is "to restore fairness and balance" to Ontario's labour relations system. The sections of the bill that are of greatest importance to education propose changes in three key areas: union decertification, union salary disclosure and the restoration of powers to the Ontario Labour Relations Board.

I feel it is important to applaud the government for the positive aspects of this proposed legislation before focusing on the areas that deserve greater attention and further deliberation.

The proposed amendments to sections 4 and 5 of the bill, which will repeal the requirement for unionized businesses to post information outlining the procedures for union decertification, are most welcome. In 1995, when the previous government enacted the legislation, there was no need for the provision which required the posting of this material. Working individuals could already obtain information about the certification and the decertification process from the OLRB. The existing law was both provocative and one-sided and served only as a vehicle for the destabilization of the labour movement. Interestingly, there was no corresponding requirement to post certification information in non-unionized workplaces.

Section 6 of the bill will repeal section 92.1 of the act, which deals with trade union salary disclosure. Many labour organizations already have a requirement for salary disclosure in their constitutions. Again, the existing provision is provocative and one-sided. It does not contain an equivalent requirement for companies to disclose similar information about management.

The Labour Relations Act, 1995, already requires unions to provide a copy of an audited financial statement for the previous fiscal year to any member requesting it. It also requires that unions that administer vacation pay, health or pension funds for union members must file an annual financial statement with the Minister of Labour that discloses salaries, fees and remuneration charged to the fund. Any member may request a copy of that statement from the administrator of the fund. These sources of information render the salary disclosure provision unnecessary. It requires resources to be expended in obtaining information when they could be better used elsewhere. With its elimination, it will restore respect to the various labour organizations.

The proposed legislation will move to restore the OLRB's long-standing historical powers to address the worst labour relations. It restores to the board the power to certify a union where an employer has breached the province's labour relations laws during a union organizing campaign. The remedy would be reserved for the

worst breaches and worst situations. The proposed legislation attempts to strike a balance. It would also give the board the power to dismiss an application for certification where a union violates the act during an organizing campaign in circumstances where no other remedy is sufficient.

When the previous government removed these provisions, it removed the only effective remedy for the worst breaches and the worst cases. Not only did it leave such cases without a potential meaningful remedy, but it sent a clear signal to the labour relations community that certain conduct was not viewed to be as serious as it should have been. That signal does not foster productive and harmonious labour relations and does not contribute to the overall prosperity of Ontario.

The revisions to section 98 will effectively restore the board's power to reinstate on an interim basis workers who are fired or disciplined during a union organizing campaign because they were exercising their rights under the act. Restoring the power to order interim reinstatement will enable the board to respond to any potential harm caused by the dismissal in a timely way, pending a final review of the matter. This allows for proper due process to occur when there is a disagreement between employer and employee.

In regard to the issue of card certification, this bill is clearly lacking. In the period between 1950 and 1995, a union certification system based on membership cards was the norm. Automatic certification could take place if a union signed up more than 55% of the bargaining unit.

This older practice will now only be applied to the construction trades. In this respect, the revisions are discriminatory. They will perpetuate an environment of low wages and poor working conditions for the most vulnerable in the workplace, namely, women and new immigrants. For this reason alone, card certification should be made available to the full labour community.

We believe we have been quite complimentary in addressing this new legislation. I have outlined the areas which deserve comment in the existing bill. However, what is missing from this legislation also deserves comment.

The bill does not include, but should, sections that can deal with scab labour. With this absence, the labour community will continue to go wanting in their endeavours around negotiations. Across Canada, around 30% to 35% of workers are covered by legislation that prevents employers from replacing them with strikebreakers if they are engaged in a legal strike or lockout, without stifling economic growth.

If the government chose to augment this legislation to include both a redress of the sections involving card certification and an inclusion of anti-scab provisions, we would realize a more complete address of the labour community's concerns. In this event, we would have before us admirable legislation.

In conclusion, I want to commend the government for a dramatic departure from the previous government in the area of labour relations. This new path will lead to

greater fairness and balance in this portfolio. Further, this legislation has the ability to encourage more productive relationships between employer and employee groups. As well, these changes will serve to instill long-term stability in the workforce and help promote a more prosperous Ontario.

The Chair: Thank you. Mr. Kormos, 30 seconds.

Mr. Kormos: Thank you very much for your presentation. You understand that if this bill had card certification for every worker, I would be one of this bill's greatest proponents. The problem is that I'm hard pressed to put myself on record as endorsing a bill that denies card certification to the vast majority of workers.

I listened to two operating engineers—I don't know if you were here when they made their submission—talk about the dirty tactics that their bosses used when they were trying to organize a union. That was as potent an argument as any for card certification in the building trades and, quite frankly, for every other worker in this province. That's the dilemma we've got.

Mr. Coran: And that's exactly why I added that paragraph to state exactly that.

Mr. Flynn: Mr. Coran, thank you for that presentation. It was probably one of the most balanced we've heard, and I appreciate that.

Excuse my ignorance. Does OSSTF organize any other members outside of teachers?

Mr. Coran: Oh, absolutely. I started my presentation with the fact that we have 50,000 members. We have educational assistants, speech-language pathologists, social workers, child and youth workers. It goes on and on.

Mr. Flynn: OK, but they're all in the teaching—

The Chair: Thank you. It's 30 seconds in total. Sorry.

Mr. Flynn: No problem.

Mr. Arnott: Thank you very much. You're here on behalf of the high school teachers. We appreciate your presentation—

Mr. Coran: Not just high school teachers—and some other educational workers.

Mr. Arnott: You said that “Many labour organizations already have a requirement for salary disclosure in their constitutions.”

Mr. Coran: That's correct.

Mr. Arnott: Do the high school teachers do that?

Mr. Coran: Yes, we do.

Mr. Arnott: For how long have you done that, and how is that disclosed to your members?

Mr. Coran: It's part of our audited financial statements, which are available at the member's request.

The Chair: Thank you for your presentation. We are within the time.

GREATER TORONTO
HOME BUILDERS' ASSOCIATION

The Chair: The next one is the Greater Toronto Home Builders' Association.

Mr. Jim Murphy: Good afternoon. My name's Jim Murphy. I'm the director of government relations for the Greater Toronto Home Builders' Association, a 1,300-member association. For those of you who are not aware, the Greater Toronto Home Builders' Association represents homebuilders, professional renovators and associate members operating within the greater Toronto area. We exist to educate, to advocate and to be the voice of the residential construction industry.

From an economic point of view, new homebuilding and renovation in the greater Toronto area currently accounts for approximately 240,000 jobs, \$10 billion in wages paid and approximately \$18 billion in contribution to GDP. Our industry pays more than \$5 billion in taxes to all three levels of government, federal, provincial and municipal.

Beyond the statistics, we fulfill the hopes and dreams of up to 40,000 homebuyers annually, be they young urban professionals buying a condominium in the city or newlyweds starting a family in a new home in the suburbs.

We have been actively involved in discussions surrounding the collective bargaining framework for the GTA residential construction sector since the strikes of the summer of 1998 that paralyzed our industry.

Just by way of a little history to perhaps provide some information as to why some of the aspects of this legislation are in place, in 1998 new homebuyers endured no less than six strikes, with at least one trade on strike at any given time, for a total of 135 days, nearly five months, from spring to fall.

Following those harmful strikes, GTHBA, along with other groups—Richard Lyall's here from ResCon, whom you'll be hearing from tomorrow—led a concerted advocacy effort to bring about changes to the collective bargaining system affecting residential construction in the greater Toronto area.

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In the spring of 2000, the previous Conservative government introduced Bill 69, which became effective for the 2001 collective bargaining season. This legislation included four very important provisions for our industry:

(1) It limited strikes in the residential construction sector to 46 days;

(2) It allowed for an arbitration process if there were no agreements within that time frame;

(3) It established a common expiry date for all residential contracts of April 30; and

(4) It established a common length of contract of three years, so 1998, 2001, 2004, 2007.

The result of that legislation was more certainty for the industry and, more importantly—we forget this in all the discussions between labour and management—for the third party, which is the consumer: the 40,000 new home buyers who purchase homes in the greater Toronto area each and every year.

Bill 69 worked well in the 2001 collective bargaining season. All labour contracts except one were negotiated

within the 46-day period. The legislation was so successful that the government reintroduced the provisions of the legislation for the 2004 collective bargaining season; that was in Bill 179. Last year—we just went through collective bargaining again on the residential construction side—all contracts were negotiated within the 46-day period.

I should just mention at this point that two of those provisions, the 46-day period and the arbitration, were features of each round of collective bargaining. They were not permanent features of the legislation, either Bill 169 or 179. The last two provisions, the common expiry date of April 30 and the common length of contract of three years, were both permanent provisions of that legislation.

Bill 144, the legislation before this committee, makes the four provisions I've just referenced permanent. That's contained in section 9 of the legislation you're reviewing. We congratulate and thank the government for including these provisions and making them permanent. The new home buyer will be the benefactor of these important and necessary changes. As I say, they'll come into place for 2007, 2010 and every three years out.

However, while GTHBA supports the collective bargaining framework for the residential construction sector in the greater Toronto area, we strongly object to another provision in Bill 144; namely, the elimination of the private ballot for union certification in the construction industry. I've attached a couple of letters that our two most recent presidents have sent to Minister Bentley, the Minister of Labour. One is dated January 6 and the other is previous to that: July 20 of last year. As noted in our January 6 correspondence to the minister, we are strong supporters of the current certification process, which mandates a private ballot. Transparency must be maintained during union organizing efforts. We recommend that the card-based system included in the legislation be dropped for the construction sector. The private ballot should be maintained.

I want to thank you for your time, and I'd be delighted to answer any questions you may have.

The Chair: Thank you. There's about one minute each.

Mr. Flynn: Mr. Murphy, it's good to see you again. Your membership would be both union and non-union; is that correct?

Mr. Murphy: Yes.

Mr. Flynn: The relationship between the building trades and the employers is sometimes among the best that I've seen in the country. Would the opinions that you've expressed here be the opinions of the union builders as well?

Mr. Murphy: We've dealt with both letters at our executive. Perhaps I could just explain. In the greater Toronto area, residential construction is, by and large, unionized. Certainly high-rise construction, condominium development, is 100% unionized. On the low-rise side, you have more non-union. Outside of the greater Toronto area, you have a lot more non-union in the rest

of the province. This is a major issue outside of the Toronto area. On the ICI side, as you well know, it's unionized across the province, and you have collective agreements across the province.

So I would say yes. We went through our executive, which has representatives who are both union and non-union, and they were supportive of the letters.

Mrs. Witmer: Thank you very much for your presentation. You've said here that the private ballot should be maintained. I guess I'd like to ask you why you think that is important for the employees.

Mr. Murphy: I think there are a couple of reasons that our executive would say. One is just democracy: People should be able to vote freely, without hindrance. I think the second concern that members have expressed is that during the card-based certification process, there can be intimidation. There can be a process where workers are cajoled, intimidated, or perhaps forced to sign cards. They may do that when they have a private ballot, because then they realize they have a second chance. They can say "yea" or "nay" to the union. So the first time you go through, you can still—in order to get that percentage to require the ballot, they may be less reticent. Now they won't have that second chance in terms of the private ballot.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you kindly, sir.

K.G. BAIRD GENERAL CONTRACTING

The Chair: The next presentation is K.G. Baird General Contracting, please.

Mr. Keith Baird: I've brought a colleague of mine up with me, Ralph Mooney.

The Chair: Please go ahead.

Mr. Baird: I would just like to begin by thanking the standing committee for the opportunity to speak before you. My name is Keith Baird. I have been in business since 1976, and currently am president of a small construction and home-building company.

These proposed reforms are not identifying the concerns that I feel very strongly need to be addressed in this province. I would like to speak briefly about a personal experience that affected not only me, but a number of my employees.

In 1994 I bought the assets of the Architectural Aluminium company from a court-appointed receiver. It was a company that was closed down. There was an advertisement in the paper and I felt like a change in direction in business. I contacted them. It was a business that was supplying commercial jobs, and I was aware of it. Anyway, it was engaged in the fabrication and sale of aluminum products and also did contract glazing in Ontario. I knew that the outside workers had been unionized and that the inside workers and fabricators were not. I was not concerned about the outside workers, as my whole object was to take the manufacturing side of

the business and expand the existing dealer network and exports to other countries.

Approximately a year after setting up a new plant, hiring employees and beginning manufacturing as a sole proprietorship, the president of the local chapter of the glaziers' and painters' union came to my premises and said he was using secession rights on the assets to certify my employees under the old collective agreement. You can imagine my horror at finding that, although never acted on or enforced, the collective agreement of Architectural Aluminium Ltd. covered the plant employees as well. Not one employee had asked for or wanted a union. I went to a labour lawyer in Toronto, who advised me that the union had my employees and myself over a barrel, as they had the legal right to enforce their collective agreement, unasked and unwanted. The only democratic right we had was to be unionized.

Several of my employees and I were in a very serious position. Because of our faith, we could never partake in a union agreement. As one who had every aspect of his life governed by Scripture, my conviction before God is that the employment of union labour or membership in a union is directly against the divinely appointed relationship of master and servant as set out in the Holy Scriptures. I've used two Scriptures as examples that you can look up at your own convenience. We also believe that it's imperative for a master to pay a servant what is just and fair, which is the Scripture. Also, II Corinthians 6:14 states, "Be not unequally yoked together with unbelievers."

In accordance with this belief, I, along with many other Christians, have refrained from membership in or contribution to bodies such as professional associations, trade unions, trade associations, group pension plans, group insurance, ownership of shares in publicly traded companies or any such activity. This should help make it clear that trade unions have not been singled out for attention; the principle is pervasive in my life, touching many areas. We don't have a common link in housing. We won't have a joined house or joined business premises. We keep ourselves separate from the world and any connection.

The employees therefore hired a lawyer to represent their interests, but the law was clear: We had to submit to a collective agreement. Words cannot express to this committee the turmoil and stress created by this on all of us.

After expending tremendous amounts of work and money to get the company this far, I had two options: I could leave my Christian fellowship, leave my family and friends, and enter into a union agreement against my own convictions and conscience, or I could close my business, causing loss of employment and financial hardship to my employees, who were my friends, and to my own family.

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I was shown mercy at the subsequent Ontario Labour Relations Board hearing—we had an arbitrator there with my lawyer, the employees' lawyer and the union

lawyer—when I explained my conscience regarding unions and that this would become a charter issue that would go to the Supreme Court of Canada. If I lost at that stage, I would have no alternative but to close the business. The union president had to make a business decision. Faced with a large financial outlay with no prospect of a return, the application was withdrawn.

I would like to mention that it was a small local. It would have caused hardship for that local. If it was a big union organization, I think it would have been a different story.

I would like to mention to this committee that both Australia and New Zealand, which I'm sure the government would view as having progressive labour legislation, have labour laws in place that make provision for employers with under 20 employees and who have the same convictions as myself to be exempt from compulsory collective agreements.

I look to the standing committee on social policy to clearly recommend exemption from collective agreements for both employers and employees when their conscience, because of religious conviction, does not allow membership in trade unions. This law would certainly be supported by the Charter of Rights and Freedoms and would prevent anyone else from having to go through the pressure of completely unwanted union activity.

I would like to emphasize that my reason for being here is that we need a conscience provision in this province. As an aside, so as not to detract from what has been said regarding the need of a clear provision for conscience in Ontario labour legislation for every employer and employee, we need to take a quick look at the construction industry.

I am in the construction industry, as I mentioned, and I've talked to subtrades. Many of them complain about being constantly harassed, threatened and intimidated to join a union. Over the years, I've had several examples, in this regard, of what we would consider criminal activity in this province. One drywall contractor told me his men have had 28 tires slashed in an organizing attempt, to get them to sign membership cards. These employees were followed to their own homes. The next day, their vehicles were vandalized. There should be an inquiry—I think that would be the word; we hear about the Gomery inquiry—into the construction industry to reveal what is really going on and, if this is criminal activity, how we can bring about legislation to stop it.

I would plead with this committee not to take away the democratic right of all workers to a secret ballot away from all threats of coercion. Let's represent the interests of workers, not just unions, and help support democracy in the workplace. A government needs to be a terror to an evil work, not a supporter of it. Let's make laws that are clear, and not leave it up to a partisan labour board. I am relying on this committee to respect and carry out these recommendations, especially in regard to conscience.

The Chair: There is no time for questioning, but thank you for your presentation.

CANADIAN LABOUR CONGRESS,
ONTARIO REGION;
TORONTO ORGANIZING FOR FAIR
EMPLOYMENT

The Chair: The next presentation is from the Canadian Labour Congress, Ontario Region.

Ms. Winnie Ng: Good afternoon. My name is Ms. Winnie Ng, regional direct for CLC. With me is Deena Ladd, coordinator of Toronto Organizing For Fair Employment. We'll share the time.

The Canadian Labour Congress is the central national body representing 3.2 million unionized workers across the country. In Ontario region, we work closely with the Ontario Federation of Labour, the affiliates and the 50 labour councils locally across the province to advocate on behalf of working people.

For the deputation today, I would like to focus on card-check certification, and speak to it as someone who joined the labour movement in 1977 as a union organizer, and who has worked primarily with immigrant women workers and workers of colour in the garment industry and in the hospitality sector.

Card-check certification was enacted in 1950 by the Conservative government. For more than half a century, workers expressed their wish to join a union by signing a union membership card. When the union had more than 55% membership evidence for that particular workplace, they applied for certification. If it was between 45% and 55%, the union could apply for a vote. This was done for good reasons: to reduce the fear factor and to eliminate employer retaliation.

When workers join a union, it's usually not just for the possible wage increase, but for the desire to be treated with dignity and respect. They see the union as a means to end discrimination, favouritism and differential treatment; in short, not to be treated as second-class citizens.

When workers put their signatures on membership cards, it's done with much care and courage, and should not be taken lightly. A lot of the time it's harder to convince a worker to sign a card than to cast a ballot. They vote in a secret ballot because their identity has been out in the open. Usually it's done after prolonged discussions involving the workers along with their families. To me, the signature is an authentic and accurate indication of the wish and courage to join a union. The card-check certification process protected workers from intimidation, harassment and reprisal from employers. It was a fair system.

In 1995, the Harris government's Bill 7 shifted the balance very much toward the employers. The vote is basically asking the workers to jump through hoops and make the same choice twice. The week prior to the vote becomes an open season for employers to resort to bribery and/or retaliation in their all-out anti-union campaign. For most workers—excuse my language—it's a week from hell. It's a systemic barrier put in by the Harris government to erode the fundamental right of freedom of association.

Therefore, we're very pleased that the new government has recognized the unfairness and proposed to restore card-check certification for workers in the building trades. It's about time. However, we are asking you to go one step further and restore the same right to all workers in Ontario, which they had exercised from 1950 to 1995.

Workers in Ontario do not need a two-tier union certification system. In this new globalized economy, one in every four workers in Ontario is in a precarious temporary work arrangement. There is a growing number of workers who are in transient, temporary work sites not unlike the building trades and construction workers.

The latest StatsCan data have shown that by the year 2016, one in every five Canadians will be a person of colour or member of a visible minority. Studies such as Grace-Edward Galabuzi's report on racialized poverty point out that workers of colour are, on average, paid significantly less and have less job security than other workers. The growing income and opportunity gaps are raw indications that some members of our society are more vulnerable to discrimination in the job market.

The labour force survey from StatsCan has also consistently illustrated that unionized workers earn more than non-unionized workers. Just as an example, in 2003, on a national basis, the hourly wage difference between a unionized woman worker and her counterpart in a non-unionized workplace was \$5.39. When we know that unionization can raise the floor and improve the lives of working people and their families, why won't we do the right thing?

The improved wages of unionized members go back to the tax base of the local economy. It is therefore incumbent upon a government to have both the political will and the courage to address some of the inequities. Restoring the right of card-check certification to all workers in Ontario is the only fair thing to do.

I'll turn it over to Deena.

Ms. Deena Ladd: I'm from Toronto Organizing for Fair Employment. We're a workers' centre that works with non-unionized workers who are predominantly in precarious types of employment. I'm talking about temporary agency workers, contract workers, on-call, casual, independent contractors—basically those jobs that are becoming the norm in today's workplace. In fact, 37% of workers in Canada are now in these forms of non-standard jobs.

At our centre, we receive hundreds and thousands of calls from workers across the city who call with workplace problems and violations of their employment standards.

1730

Bill 144 has recognized that the reality facing workers in the construction industry, which includes instability and insecurity of work, poor working conditions—especially health and safety and injuries on the job—and the transient nature of moving from job site to job site, needs card-based certification to support attempts to form

a union, and that having a vote in addition to cards does not provide fairness and choice in the workplace.

What I would say to you is that those same conditions I've mentioned in the construction industry are reality facing workers in many sectors and for many non-unionized workers in Ontario. StatsCanada, for instance, reported in 2001 that there are close to 450,000 workers in the Toronto census metropolitan area who are working in precarious types of employment. Ontario has the largest number of temporary agencies. In Toronto alone, we have 500 to 600. This reality means that many workers are moving from temp assignment to temp assignment. Workers are on contract and afraid to speak out. Workers from many sectors—from health care to office work to manufacturing—are working alongside regular workers at lower wages, no benefits and no security of work. It's common knowledge that 90% of workers who come to the Ministry of Labour employment standards branch only do so after they've lost their jobs. In fact, that's one of the reasons why the minister himself has created the Minister's Employment Standards Action Group: to look at the poor working conditions that are facing workers. I think this shows us that protection is needed for workers who are in precarious work.

I just want to finish off by saying that only a couple of weeks ago I was talking to one of our members who has been a temporary agency worker at the same assignment in the same workplace for nearly three years and was told to not come in to work on the day that there was a vote taking place for union certification. For those workers, disobeying that order means losing their assignment; it means not being part of a union, even if that's their wish.

I would urge you to extend card-based certification to all workers, as the working conditions and the reasoning that has led you to put that in for construction work are the norm and the reality for workers in many sectors and in many of the workplaces that exist today in Ontario.

The Chair: There is no time for questioning, but thank you for your presentation.

IRONWORKERS, LOCAL 721

The Chair: Next is the Ironworkers, Local 721.

Mr. Mike Dix: Good afternoon, ladies and gentlemen of the committee. Thank you very much for hearing me today. My name's Mike Dix. I'm with the Ironworkers, Local 721; I have been for 25 years.

Bill 144, and the amendments it contains, is of the greatest importance to all the working people and families of Ontario. For too long have the governments of Ontario flagrantly played politics with the Labour Relations Act. This crucial piece of legislation, amended and re-amended by the former NDP and Progressive Conservative governments, must be restored in a meaningful way to a form in which it can protect the rights of working people to health, safety and choice.

Card-based certification has been an integral part of the Labour Relations Act since its inception during the

massive expansion of post-war industrial unionism in the 1950s. However, the notorious Bill 7 of the Harris Conservatives targeted, among other things, card-based certification. This vital tool was one of the first casualties of the so-called Common Sense Revolution. However, it is obvious that this amendment made little sense, especially to the working people of this province.

Professor Sara Slinn of the Queen's University faculty of law found during the course of her research that the removal of the card certification and introduction of the mandatory vote system in Ontario in 1995 had a very large negative impact on the chances of success for certification applications made in the province. The average certification application had about a 22% lower chance of succeeding under the mandatory vote system than it would have if the same application had been made under the card system of certification. Professor Slinn goes on to conclude that the mandatory vote appears to have the effect of reducing access to union representation to all workers.

I believe that by taking down this unreasonable barrier to organization—billions of dollars that are currently lost to companies operating within the underground economy and utilizing uncertified labourers—the landscape of labour in Ontario as a whole would be improved, the Workplace Safety and Insurance Board would become stronger and more comprehensive, and we would be one step closer to improving the standards of workplace health and safety of all Ontarians.

The right to choose whether or not to be affiliated with a trade union has always been a pillar of the Labour Relations Act and, as such, Bill 144 does much to repair the damage done by previous administrations.

The rights to health, safety and choice are not Liberal, NDP, Progressive Conservative or even trade union values; health, safety and choice are Canadian values. I know that, across all party lines, through all the politicking, this is something we can all agree on and move forward with.

Thank you very much for your time.

The Chair: Thanks very much for your presentation. We have at least a minute each. We'll start with Mrs. Witmer.

Mrs. Witmer: Thank you very much, Mr. Dix, for your presentation. Basically, what is it you're asking for?

Mr. Dix: That the policy be moved through, moved on. We would greatly appreciate that, and I think that it would be beneficial to all working people, all families, whether or not they are part of the construction industry. It keeps a fair, level playing field out there. I firmly believe, wholeheartedly, that it upholds a basic standard of living for Canadians.

Mrs. Witmer: We heard the last speaker say that sometimes when there's not a secret ballot vote, there is intimidation and harassment of workers, not just in the workplace but also at home. Would you agree that that does sometimes take place when you have automatic card-based certification?

Mr. Dix: I wouldn't want to agree with that. That has been said from both sides of the table. So whether or not you would perceive it as such—

The Chair: Thank you, Mr. Kormos?

Mr. Kormos: Thank you, Brother Dix. You know where I stand on the issue of trade unions. I think they're the greatest thing that ever happened to not only working people but the economy of this country, of the Western world, in building that high-wage economy. These are the people who pay taxes, you and your members, after you fight to get better wages.

I agree with you about Bill 7. You know how hard we fought Bill 7, tooth and nail, revoking card-based certification for all workers.

My problem is this: I don't begrudge any worker card-based certification. What do I say to the tens of thousands of workers who aren't going to receive card-based certification as a result of Bill 144, with no promise that it's coming a year from now? That's the problem. What do we say to those women and men? You heard two sisters who are out there organizing some of the hardest-to-organize workers: people who work out of their homes, needle trade workers, contract workers. What do we say to those folks? Because you're right about card-based certification and you're right about the union. What do we say to those tens of thousands of workers, the Wal-Mart workers who are going to get beat up on—you know it, right?—in that week between the card signing and the vote? We saw it again just a little while ago.

Mr. Dix: I firmly believe that, with the successful passing of this bill, in time, we'd be able to help our brothers and sisters in other areas.

Mr. Kormos: Brother, I hope you're right.

Mr. Flynn: Thank you, Mr. Dix, for coming today. It's really appreciated. One of the reasons that is used for extending card-based certification to the building trades is mobility. From a job-site sense, how long would a typical contract last on a particular job site for the Ironworkers?

Mr. Dix: It varies; it really does. You could be a week; you could be two weeks. It varies depending on the size of the job itself.

Mr. Flynn: Would it be unusual for the same company to have members on various job sites at the same time?

Mr. Dix: That's correct.

The Chair: Thank you for your presentation. We're right on time.

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JOHNSTONE BROTHERS EQUIPMENT CO.

The Chair: We'll move on to the next one, Johnstone Brothers Equipment, please.

Mr. Bill Johnstone: I've got Brent Peebles, a colleague of mine, along with me, if that's all right.

The Chair: Yes, it is.

Mr. Johnstone: Good day, Mr. Chairman, ladies and gentlemen, Mr. Kormos.

Thank you very much for the opportunity of speaking before the standing committee on the proposed reform of the Labour Relations Act today. In 1992, we were also afforded the time to speak to the standing committee on the proposed Bill 40. The only face I recognize in this current standing committee is Mrs. Witmer.

I'm a partner in a construction equipment business in Brampton. I've been involved in the construction industry for over 30 years and I have many, many good customers in this industry. At the present time, I'm hearing many concerns about the proposed Bill 144 amendments. That strictly relates to conscience.

I am also part of a universal Christian assembly known as Brethren. We are believers in the Lord Jesus Christ and pattern our lives strictly in accordance with the Holy Scripture, which we believe is the inspired word of God. With the help of the Holy Spirit of God, we maintain total separation from everything not in keeping with the Lord's Supper—that's Holy Communion—and not consistent with the "Holy Fellowship of God's Son." In short, we recognize God's supreme authority over us and we could never form or join or contribute to an association having any other basis.

This applies to every detail of our lives, including no membership in unions or any associations; no investment in mutual funds or shares in public companies; no group pensions, group insurance or group medical plans. In the same vein, we do not live in or operate our businesses from premises which involve a physical link, such as a shared wall or anything common. We don't have units—that kind of thing.

We assume no sectarian ground, believing that the gospel is preached to all men. We are here today to ensure that certain facts are presented to you as representatives of the government of Ontario. We pray for good government and support right government. We are concerned about Bill 144, because it appears as though authority will be given from the Ontario Labour Relations Board to the union, which is beyond what any unelected body should have. If I, as an employer, contravene the labour act, even unwittingly, the government may assign the union the right to certify my company. While you protect the conscience of employees in section 52 of the Ontario Labour Relations Act, there is no such protection for an employer. There is also no other arbiter of the alleged contravention.

The proposal is against my basic human rights that the Constitution of Canada and the Canadian Charter of Rights and Freedoms have as their basis: "Canada is founded upon principles that recognize the supremacy of God and the rule of law." Some of the fundamental freedoms in Canada are, as we probably all know: freedom of conscience and religion; freedom of thought, belief, opinion and expression; freedom of peaceful assembly and freedom of association, which would also include freedom of disassociation. As well, specifically set out is the right to pursue the gaining of a livelihood.

Because of my conscience before God, I could never have anything to do with trade unionism. Trade unions are an association with no scriptural basis, in complete disregard of God's principles regarding the workplace and, therefore, denying his rights over man, having as their reason for existence the legalization of collective power to act outside the law. Unionism has been strengthened by unsuspecting persons who have banded together and then been gripped by the insidious power that is the product of peer pressure.

Because we recognize the supremacy of God and own his rights over us, and because Canadian law has already enshrined in it this recognition, and because of my conscience, which has been enlightened by God's glad tidings concerning his son, Jesus Christ, our Lord, we appeal to you today to carefully consider your proposed reforms.

God has given all men the right—really, the requirement—to work so as to eat. “If any man does not like to work, neither let him eat.” That's the Holy Scripture. That's 2 Thessalonians 3, verse 10. That right cannot be taken away by mere men or prevalent social whim. It must be wrong to legislate the possibility of completely denying a person employment, thus letting him starve.

It is the duty of this government to exercise its God-given authority to protect the rights of both employer and employee, with no third-party involvement. We must state that any government alliance with trade unions, which are against God, condones violations of the divinely appointed master and servant relationship: Ephesians 6, verses 5 to 9. Introducing ungodly practices or ideas to administration of law will only compromise right judgment and open the door to further moral decline, not only here but across the country.

Has the government of Ontario considered the consequences of some of these proposed changes? To allow unions unhindered access to my business premises really vests in the union more authority than is wielded by police forces, which represent government.

Now, speaking on behalf of many persons of conscience in Ontario, I will state that if a union is imposed on any of our companies, we will close down our businesses and leave our employment, as dictated by our own conscience. Is this Ontario's vision for the future?

Thank you.

The Chair: We have three minutes; one minute each. Mr. Kormos, you're next.

Mr. Kormos: Mr. Johnstone, where you here when Mr. Baird was making his submission?

Mr. Johnstone: Yes, I heard that.

Mr. Kormos: I trust that you and he are coming from the same perspective.

Mr. Johnstone: Yes.

Mr. Kormos: I understand your position clearly. Thank you.

Ms. Wynne: I just need to clarify. You've said, and rightly, that employees are protected in section 52 of the

labour act, that they don't have to join for reasons of conscience.

Mr. Johnstone: Right.

Ms. Wynne: You, as an employer—I'm just not understanding exactly what protection you're looking for, because the employee, who would be the person who would join the union, is protected.

Mr. Johnstone: If I could give an example: If I contravened the Labour Relations Act, perhaps unwittingly, I believe, according to what I've read in the proposal, that you could say, “You must recognize a union in your business.” That's where I have a problem, because it's not that I want to be unfair to anyone. I want to pay my people equal to or better than what union employees get, but because of my conscience, I cannot have a union environment in my own shop.

Ms. Wynne: OK. I understood what you said, that your conscience wouldn't allow you to join a union. But you're saying that you couldn't, because of your conscience, live by the laws that govern unions?

Mr. Johnstone: That's right, because really, a collective agreement would have to be signed by both myself and the union, and I couldn't enter into that. That's really what I was trying to say. I'm sorry I put it so poorly.

Ms. Wynne: OK. Thank you.

Ms. Witmer: What is it that you fear the most from this legislation? And thank you for your presentation.

Mr. Johnstone: You're very welcome, Mr. Witmer. It's been many years, hasn't it?

Ms. Witmer: Yes, it has. We were both here in 1994.

Mr. Johnstone: We're trying to proceed simply in relation to our businesses. We don't want to take advantage of people. I mean, I understand; I read the papers; I listened today too, and I realize that there are big concerns about taking advantage of humanity.

We're not here to do that. We have a conscience before God. Really, what we'd like to do is have a conscience clause inserted that not only protects the employee but protects the employer, because we feel that's vital to the business continuation in Ontario. And we do contribute much in the way of generation of funds in our businesses to the province of Ontario.

The Chair: Thank you for coming.

SERVICE EMPLOYEES INTERNATIONAL UNION

The Chair: We'll most on to the last presentation, from the Service Employees International Union.

Mr. Van Beek, you may start any time you are ready, please.

Mr. John Van Beek: Thank you very much. I'm substituting for Linda MacKenzie-Nicholas, who was supposed to make the presentation, but she was called away this afternoon on an emergency medical situation in her family. So I'll be reading some of her remarks.

I just want to say that SEIU in the province of Ontario represents about 45,000 workers—women and immi-

grants, mainly—some of the lowest-paid workers in the province. Just two weeks ago, SEIU Local 1.0n had a vote at a nursing home in Toronto. Union representation guaranteed cards for over 60%, to 65% of the workforce. We lost it. We never lose nursing home representation votes, simply because of the kind of contracts that we have throughout the industry in about 120 nursing homes across the province.

What the hell happened between putting in the application for certification and the vote that day? I don't know. The only thing I can suggest is that our organizers tell us there's certainly a lot of intimidation on behalf of the employer. Mainly an immigrant workforce, women working at that location.

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The only way around this, I think, is a card-check certification process. Without a union card, workers in this province don't have any rights other than what employers will give them. In a previous life, I used to do health and safety, and I taught health and safety at George Brown College. I can tell you without a doubt that health and safety rights don't mean a damn thing unless there's a union present. Some of the worst conditions that poorly paid workers work in are unsafe conditions.

The question of mobility is also an issue. We represent the largest proportion of home care workers in the province. Contracts are flipped every three, four, five years, and workers lose their union simply because contracts are flipped for no other reason than that it's a managed competition model that the people who just left introduced back in 1999.

There's a situation in Hamilton in terms of the VHA, a non-profit organization that supplied home care services. They lost the contract. Why did they lose the contract? It certainly wasn't because the contracts were picked up by home care agencies that provided cheaper services—not at all. As a matter of fact, those services were more expensive. So what was it all about? It was all about union busting.

Home care workers don't have the same rights as any other workers because with elect-to-work they don't have successor rights. So we have to guarantee, once we have workers organized, that they remain organized and they have their rights in terms of trying to improve their work lives.

Linda MacKenzie-Nicholas has put together some comments in terms of the reasons why we believe card-check certification is important in Ontario. What is interesting is that in that brief she has also pointed out that there are hundreds of thousands of workers in Ontario who want to join a union but they won't join a union because they're afraid of intimidation. In her presentation, she has shown some statistics from StatsCan to make that point.

I can certainly say on behalf of the Service Employees International Union that any worker who signs a card does so knowingly, willingly and without intimidation, because once we sign a member, we want to make sure we keep that member. It's terribly important that we go

into a first contract situation with a very strong membership behind us, and the only way we can do that is to make sure that they believe in the union, that it will make things happen for them, in the first place. So a card check is honest, it's fair and it's important to move ahead the interests of the lowest-paid workers in this province, to give them some dignity, respect and at least something left over in their paycheques on a weekly basis so they can improve their economic lives. Thank you very much.

The Chair: Thank you. One minute each. My Flynn?

Mr. Flynn: No questions.

The Chair: Mr. Arnott?

Mr. Arnott: I don't think I have any questions either, but I appreciate your presentation. Thank you very much for coming.

The Chair: Mr. Kormos, one minute.

Mr. Kormos: I just want to understand SEIU's position perfectly clearly. You are advocating card-based certification for every working woman and man in this province?

Mr. Van Beek: Absolutely. It's the only fair way to go.

Mr. Kormos: Why would the government extend that only to a small group? I'm not begrudging the building trades the right to do card-based certification, by no stretch, but why would the government extend that to but a small group and ignore, quite frankly, some of the lowest-paid and most vulnerable workers?

Mr. Van Beek: I can only guess, and it would be sad for me, because I would have to become very cynical about the process. I don't think I want to do that today. I want to argue very strongly for the fact that each worker in this province should have equal rights. If there is a worker in the construction industry who has a well-paid job and someone who's cleaning the floors at the Royal Bank tower, and they don't get the same rights in terms of joining a union, that's wrong.

Mr. Kormos: My concern is about a workplace apartheid.

Mr. Van Beek: Sorry?

Mr. Kormos: I said, my concern is about a workplace apartheid.

Mr. Van Beek: Certainly it's a workplace apartheid; there's absolutely no question. There are different levels of workers, and it's simply wrong.

Mr. Kormos: Thank you, brother.

The Chair: There's a question from Ms. Wynne. We still have a couple more minutes.

Ms. Wynne: Thank you for your presentation. I'll take time to read the notes that you've left. I understand the card-based position that you're taking, but on some of the other initiatives in the bill—the remedial certification, the decertification posters, the interim reinstatement—can you comment on whether you think those are positive things and moving in the right direction?

Mr. Van Beek: We're tremendously happy that certainly the decertification posters have gone. Again, that was terribly unfair. You had a decertification poster, but you didn't have any posters that say, "Hey, you want to join a union?" Put that sucker up also.

Ms. Wynne: So you see this legislation as moving in a more balanced direction.

Mr. Van Beek: Certainly not balanced, because we're trying to re-establish some equilibrium that existed before. But you haven't gotten there yet. The water is still very high on the other side.

Mr. Kormos: You gave it your best effort, Ms. Wynne.

Ms. Wynne: I was looking for the movement. So you are happy with some of these pieces of the legislation, but you don't think we're there.

Mr. Van Beek: Not by a long shot.

The Chair: I thank you all. We did complete on time, and I thank all of you for respecting the time, starting from Mr. Craitor.

The committee adjourned at 1758.

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