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Tuesday 3 August 2010

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Mardi 3 août 2010

Standing Committee on Finance and Economic Affairs

Open for Business Act, 2010

Comité permanent des finances et des affaires économiques

Loi de 2010 favorisant un Ontario propice aux affaires

Chair: Pat Hoy
Clerk: William Short

Président : Pat Hoy
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Tuesday 3 August 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Mardi 3 août 2010

The committee met at 0916 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will now come to order. We're here for public consultation on Bill 68. If we could have the subcommittee report read first, Mr. Arthurs.

Mr. Wayne Arthurs: Chairman, your subcommittee met on Thursday, July 15, 2010, to consider the method of proceeding on Bill 68, An Act to promote Ontario as open for business by amending or repealing certain Acts, and recommends the following:

(1) That, pursuant to the order of the House dated June 2, 2010, and the letter from the whips dated July 7, 2010, the committee hold public hearings in Toronto on Tuesday, August 3, 2010, and Wednesday, August 4, 2010.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel and the committee's website.

(3) That the committee clerk, in consultation with the Chair, place an advertisement, no later than the week of July 19, 2010, for one day only, in Canada Newswire, the Globe and Mail, the Toronto Metro, and the Toronto French weekly L'Express.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 4 p.m. on Friday, July 23, 2010.

(5) That the committee clerk distribute to each of the three parties a list of all the potential witnesses who have requested to appear before the committee by 5 p.m. on Friday, July 23, 2010.

(6) That if necessary, the members of the subcommittee prioritize the list of requests to appear and return it to the committee clerk by 12 noon on Monday, July 26, 2010.

(7) That witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members.

(8) That each witness be questioned by one caucus for up to five minutes on a rotational basis.

(9) That the deadline for written submissions be 5 p.m. on Wednesday, August 4, 2010.

(10) That amendments to the bill be filed with the clerk of the committee by 12 noon on Thursday, August 5, 2010.

(11) That, pursuant to the order of the House dated June 2, 2010, and the letter from the whips dated July 7, 2010, the committee meet on Friday, August 6, 2010, for clause-by-clause consideration of the bill.

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

Mr. Chairman, that's your subcommittee report.

The Chair (Mr. Pat Hoy): Is there any comment on the report? Hearing none, are we in favour of the report? Carried. Very good.

OPEN FOR BUSINESS ACT, 2010

LOI DE 2010 FAVORISANT UN ONTARIO PROPICE AUX AFFAIRES

Consideration of Bill 68, An Act to promote Ontario as open for business by amending or repealing certain Acts / Projet de loi 68, Loi favorisant un Ontario propice aux affaires en modifiant ou en abrogeant certaines lois.

MR. PATRICK QUINN

The Chair (Mr. Pat Hoy): Very good. Now, I understand that our 11:30 presentation is here and would present now, if they would come forward: the Ontario Society of Professional Engineers. Thank you for accommodating the committee at this time. We appreciate it. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I would ask you to identify yourself for our recording Hansard and then you can begin.

Mr. Patrick Quinn: My name is Pat Quinn. I was president of Professional Engineers Ontario by election in 1999-2000 and also in 2005-06, 2006-07.

I'm not actually here speaking today on behalf of OSPE. OSPE, which is the Ontario Society of Professional Engineers, yielded their time to me and you'll see from some of the documents which I've given to the clerk how this has come about. I guess it's part of the internal politics of the engineering profession, and that's the way it is.

What I'm here to talk about is what's called schedule 2 on your bill, the Ministry of the Attorney General, and it's on the Professional Engineers Act.

Over the weekend, a letter was sent to Mr. Zimmer which said, "As you can see from the attached note from me and my colleague former presidents, we have serious concerns about two clauses amending the Professional Engineers Act, which would give unchecked power to council over fees, spending and bylaws."

It further goes on, and I've passed this through to the committee: "I cannot attend tomorrow's hearing and have asked my colleague Pat Quinn to attend in my absence, and to answer any questions the committee members may have." It's signed by David Adams, P.Eng., who is president-elect of PEO.

It's getting convoluted, as they say.

What the attachment to that letter says is the following:

"On Tuesday, the standing committee on finance will examine in detail Bill 68, an omnibus bill under the Open for Business initiative.

"It contains extensive changes to the Professional Engineers Act, many of which are of a routine operational nature which have received little comment in the engineering community outside council.

"There are changes to subsections 8(2) and 8(3) of the act which are of great concern to many members. If implemented, they will take away members' traditional rights and will give to council complete unchecked power to spend and enact bylaws.

"The last major overhaul of the act in 1984 followed extensive studies and discussions, and required that council, before a bylaw became effective, obtain the approval of the members by referendum. In experiences since then, this has not been onerous and in most cases the members' approval has been readily given.

"One area where members have seen this approval requirement as a check on council spending has been in increases in annual fees. Council has had to make adequate arguments for need and when this has been done, members' approval has been forthcoming.

"Despite a lack of study and consultation that such a major change should require, our recent" annual general meeting "and surveys by both PEO and OSPE"–Professional Engineers Ontario and the Ontario Society of Professional Engineers—"have shown that there is consensus among members that giving council unlimited powers without a reasonable check on these powers, by the members, is not justifiable or in the best interests of the profession.

"We urge that the standing committee be advised to strike out the amendments to subsections 8(2) and 8(3) and maintain the requirement for member approval before a bylaw comes into force."

These are the words of David Adams, president-elect; myself, former president; and Peter DeVita, who is also a former president.

Since 1984, PEO has operated whereby bylaws were not effective until ratified by a referendum of the members. It's traditional in our profession. There are no indications that this has hindered our operations or our progress. The amendments proposed to subsections 8(2) and 8(3) would give council absolute power. Notwithstanding the assurances that this power would be exercised with care, such power should not be granted. To take away the members' right to ratify fees, ergo control spending, not only is a breach of faith with and in our members, but removes the reasoning of a need for bylaws. If council can, by simple majority, make a motion a bylaw, what's the inherent role of a bylaw? I'm saying, please do not amend those two sections.

Just so that we're clear, perhaps I could read the sections that are involved. It comes under 16 in your papers:

"(16) Subsections 8(2) and (3) of the act are repealed and the following substituted:

"Bylaws effective

"(2) Subject to subsection (3), a bylaw made by the council is effective when it is passed." That's fairly clear. A bylaw made by the council is effective when it's passed.

It continues:

"Confirmation

"(3) A bylaw passed by the council is not effective until it is confirmed, in the manner specified by the council, by a majority of the members of the association,"—and here's the kicker—"if the bylaw so specifies," which means that council can make a bylaw and it can specify that it doesn't have to be ratified by the members.

I am prepared to answer any questions the committee may have.

The Chair (Mr. Pat Hoy): Thank you. The first round of questioning goes to the official opposition. Ms. Munro.

Mrs. Julia Munro: Thank you for coming. In the letter that you handed out, am I correct in interpreting it that you feel there was not very much consultation prior to these amendments coming forward?

Mr. Patrick Quinn: There was not the type of consultation that a major amendment such as this should have. Normally, when we make these types of amendments, and when I was president, we would have town hall meetings. We would bring in our various chapters and what have you and make them fully conversant with them. Because of the nature of this, we would actually probably have a referendum.

Mrs. Julia Munro: Given the fact that there wasn't that kind of consultation taking place, is this consistent with other professional councils? Where did this idea come from?

Mr. Patrick Quinn: I don't know. I'm told that other councils have situations like this, but I should say other councils are not like Professional Engineers Ontario. Professional Engineers Ontario has always had confidence in its members. It has been prepared to go to its members when it has bylaws that it wants to change, and

in most cases it has had those ratified. I think there are very few cases where the members have not ratified.

Mrs. Julia Munro: A final question: Would you consider this to be an affront to the transparency and accountability principles that you would normally expect to take place in your organization?

Mr. Patrick Quinn: "Affront" is a loaded term. I think it could have been handled in a better way.

Mr. Norm Miller: Just following up, in terms of your concern that the council will have too much power and be able to set fees without approval of the membership, is the council—they're elected members of the PEO. To get on council—

Mr. Patrick Quinn: Some are. The president, the president-elect and the vice-president are, regional councillors are, but a large number are appointed by the Lieutenant Governor in Council.

Mr. Norm Miller: Who are not necessarily engineers?

Mr. Patrick Quinn: Some are engineers and some are not. Some are lay members and some are not.

Mr. Norm Miller: What would the total number of representatives be on the council?

Mr. Patrick Quinn: It's about 30, and I think there are 10 who are regional. There are in the order of 12, let's say, who are appointed as a total number, then the president, the president-elect and the vice-president, and some councillors at large who are elected.

Mr. Norm Miller: So would Professional Engineers have control in terms of voting on the council or—

Mr. Patrick Quinn: Yes, it does—

Mr. Norm Miller: But you're still opposed to—

Mr. Patrick Quinn: I understand where you're coming from. When council passes a motion, it passes it by simple majority. If it wants to rescind the motion, it requires a two-thirds majority. What you're saying is throw them out and elect a different council. You could do that, yes, but then you would require a two-thirds majority in order to rescind what had been done. I don't see why we would go into such a situation when there is no demonstrable evidence that it's required.

Mr. Norm Miller: And you don't know where this change is coming from, because your organization is not asking for this change—

Mr. Patrick Quinn: Professional Engineers Ontario, as I understand, is asking for this change. That's where it fits in there. You could call us a dissident group who are not in favour of this, who don't feel this has been handled in a proper way.

I also want to say, we don't want to disturb the rest of what I would call routine matters in the Professional Engineers Act which are required to be amended. There has been some talk that this is an all-or-nothing affair, which seems wrong to me. It seems to me that this committee could recommend taking out those two clauses and leaving the rest of the changes intact.

Mr. Norm Miller: I must admit, I'm a little confused. You're past PEO president, but you're not representing PEO?

0930

Mr. Patrick Quinn: I'm not representing PEO. I'm not representing OSPE. I'm representing today just David Adams, who is the president-elect and who couldn't get here today. I should say he didn't know about this meeting until last Friday or Thursday, as I understand it.

Mr. Norm Miller: Okay. Very good. Thank you very much for your presentation.

The Chair (Mr. Pat Hoy): And thank you for appearing before the committee.

Mr. Patrick Quinn: Thank you very much.

PROFESSIONAL ENGINEERS ONTARIO

The Chair (Mr. Pat Hoy): For the committee's information, the 9:30 and 9:45 presenters have cancelled, but I believe our 10 o'clock slot is here, the Professional Engineers Ontario. If you'd come forward, please.

Good morning. You have 10 minutes for your presentation. There could be up to five minutes of questioning. I just ask you to identify yourselves for our recording Hansard, and then you can begin.

Mr. Kim Allen: Very good. I'm Kim Allen, the CEO and registrar of Professional Engineers Ontario. With me I have Diane Freeman, the president of Professional Engineers Ontario.

Good morning, Chair and committee members. Professional Engineers Ontario is grateful for this opportunity to speak in support of the 66 amendments to the Professional Engineers Act as set out in schedule 2 of Bill 68. We also want to advise you regarding our ongoing work with ministry officials to clarify some language and to ensure the act is good for business.

With our council—and again, you had some discussion with the previous presenter. President Freeman heads our 29-person council; 17 engineers are elected directly by the members of PEO, and 12 people are appointed by the Lieutenant Governor in Council. Seven of those 12 appointees are professional engineers. PEO council is the governing authority of the body that regulates the practice of professional engineering and governs Ontario's 75,000 licensed practitioners and 5,000 entities offering professional engineering services to the public. Council is committed to ensuring fair, transparent and open processes that serve the public interest.

While developing these initiatives, council consulted broadly with members. We sent out electronic surveys to our membership and had various different responses to them. We sent it out to our 30 committees representing volunteers that are engaged in a whole wide range of engineering businesses, engineering organizations that included our sister organizations across Canada, Consulting Engineers of Ontario—Barry Steinberg, its president, is here in the audience today—the Ontario Society of Professional Engineers; the Ontario Association of Certified Engineering Technicians and Technologists; and the Ontario Association of Architects,

to name a few of those that we consulted with. As many of the changes have been on the books for years, we have consulted broadly with other groups as PEO council developed its policy direction on these initiatives.

We believe the proposed changes to the Professional Engineers Act will increase the clarity, transparency, accountability and effectiveness of our work, all of which is good for business. In particular, the proposed changes address the public interest by responding to the needs of Ontario business and helping those who want to become licensed to practise engineering.

They open up engineering in Ontario and harmonize requirements across Canada to make it easier for Ontarians to do business across the country. This bill adopts the national definition of "professional engineering," which is essential to harmonizing requirements.

At the same time, they streamline PEO's ability as a regulator to safeguard life, health, property, economic interests, the public welfare and the environment. This is good for business.

PEO is leading in the effort to create a national framework where all Canadian jurisdictions have same requirements to best serve the public interest. We are floating all boats to the appropriate level. The changes will eliminate unnecessary requirements and harmonize complicated requirements, all within a national framework.

I just returned from a strategic planning session with Engineers Nova Scotia, where its council is looking to move forward with initiatives similar to the ones that are in this bill.

For example, one of the proposed changes would eliminate the requirement to be a citizen or a permanent resident of Canada to obtain a licence to practise professional engineering. We have found that despite completely eliminating application fees for internationally trained engineering graduates three years ago, some 60% of those who apply for a licence live in Canada for more than three years before they apply. Our research has shown that the residency requirement is the primary reason for this.

It's in the interests of the public, the applicants and the province to have newcomers' credentials assessed as early as possible. Since 2004, PEO has encouraged everyone to apply online before they come to Canada.

With the proposed elimination of the residency requirement, many qualified applicants could now arrive in Canada with a provisional licence in hand and be ready to immediately enter the engineering workforce.

It also provides council with the ability to make the provisional licence a more effective regulatory instrument. This is good for business.

Similarly, PEO has for years collaborated with the Ontario Association of Certified Engineering Technicians and Technologists to enable highly skilled technologists and applied science graduates to practise professional engineering within their areas of expertise. One of the proposed changes to the Professional Engineers Act would enable these professionals to offer specific professional engineering services independently to the public.

Having all professionals accountable through licences and certificates of authorization eliminates the need for government to prescribe unnecessary regulations to protect the public interest. This is good for business.

The final proposal that I'd like to highlight for you relates to repealing an exception related to being licensed to carry out an act within the practice of professional engineering in relation to machinery and equipment for use in the facilities of the person's employer. This exception exists only in Ontario. Repealing it levels the playing field across the country.

Further, in the 1990s, an Occupational Health and Safety Act regulation was amended to require pre-start health and safety inspection reviews of machinery or equipment, to be conducted by a professional engineer. This amendment has prevented numerous injuries and fatalities to Ontario workers.

The change creates regulatory cohesion. At the same time, something should not be covered in one statute while having more stringent requirements in a regulation under a different statue. Levelling the playing field, workers' safety and regulatory cohesion is good for business.

In summary, Professional Engineers Ontario believes that the proposed changes to the Professional Engineers Act, as set out in schedule 2 of Bill 68, if enacted, will open up engineering and harmonize requirements, making them good for the public, good for business and good for the profession.

Since the introduction of Bill 68, we have continued to work with ministry officials and have identified some language that could better reflect the intent of the initiatives. Clarity, again, is good for business. We expect that the government may bring forward some amendments related to schedule 2 during the committee's clause-by-clause review later in the week.

One of these would eliminate the requirement to prescribe application forms in regulations. Four would relate to the association's register, to provide more information about licence holders and certificate holders. The other three, simply, more clearly reflect PEO council's policy intent for those initiatives and are really language changes.

We urge all members of the committee to support these motions.

To conclude, thank you for the opportunity to address you. We'd like to thank the government for moving forward with PEO council's requests to enhance PEO's ability, as a regulator, to safeguard life, health, property, economic interests, the public welfare and the environment.

This government recognizes the important role that engineers play in our society and in our economic well-being. This is good for the people of Ontario, good for the engineering profession and good for business.

I would be pleased to answer any of your questions.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning will go to the NDP. Mr. Prue.

Mr. Michael Prue: Thank you very much. You were in the room when the previous presenter presented. Part of the letter—you're in the same organization, I take it. This is exactly the same?

Mr. Kim Allen: Absolutely.

Mr. Michael Prue: Absolutely. So there is some dissent within your organization, it appears.

Mr. Kim Allen: Correct.

Mr. Michael Prue: The incoming president is not in support, and the gentleman who was here outlined what some of the concerns were.

The letter from the president-elect outlines three things. I wonder if you would comment on them, because you didn't deal with any of that during your presentation.

The first is that there are concerns about the two clauses amending the Professional Engineers Act that would give unchecked power to council over fees, spending and bylaws. Do you believe that that is the case?

Ms. Diane Freeman: Could I respond to that?

Mr. Michael Prue: Surely.

Ms. Diane Freeman: I can assure you that the amendment acts have been in the works, I think, for about 23 years. We had a very substantial council meeting—several—to go through the amendments. The president-elect certainly did voice his concerns at that time, at the council meeting, and so did the Ontario Society of Professional Engineers; they had provided correspondence to us as part of the consultation process.

0940

A considerable amount of discussion was given to that particular issue by council and a very strong commitment was made at that meeting, again at our AGM, and again through correspondence from myself to advise that by no means is there any intent to alter the seeking of member ratification of changes to the bylaws by removing this from the act. What we're trying to do is move it into a bylaw—the ratification piece—so that we can ensure that we have a variety of tools to do the ratification, whether it's by email or by written ballot, as currently written in the act, or whether it is through member ratification at the AGM.

Also, as part of the consultation process, we received a variety of feedback from the licence holders with regard to them asking us—some licence holders want to ratify everything; some only want to ratify what they refer to as big issues, and so we wanted to undertake more consultation to make sure that when we create this ratification bylaw, if the majority of the licence holders want to ratify everything, that's what we want to do.

Mr. Michael Prue: Okay. If I can go on, he writes in the letter—and you started to answer that—

Ms. Diane Freeman: You have an advantage on me, I'm afraid, because I don't have a copy of the letter.

Mr. Michael Prue: Well, I'll read you the paragraph; it's just a sentence long. "Although there was a heavily slanted effort to convince members of the so-called benefits of having council appoint the president-elect, PEO's own poll indicates that two out of three engineers oppose the proposal, as do we."

Did you do a poll, and did two out of three of your members oppose, and then you're here speaking in favour of it?

Mr. Kim Allen: The first one regarding the bylaw, just to put it in there: We did a broad survey where we surveyed all members. We've got some 65,000 of our 75,000 licence holders on email, where we serve them, and there were only 34% that objected to proceeding with council actually ratifying fee changes to the bylaws. The clause you're talking about now is that council has regulation-making authority to define what council actually looks like.

None of that is in the bill before you. There are no changes regarding how council is made up. All that's required in the act is that there are between 15 and 20 elected people and the government can appoint up to 12 people, and it defines how many lay people have to be on it. That's it. The rest of the council makeup is defined in regulations, and council has the regulation-making authority to do that. So the comment in there, again, isn't germane to this bill whatsoever.

Mr. Michael Prue: Thank you very much.

The Chair (Mr. Pat Hoy): And thank you for your presentation before the committee.

ECOJUSTICE CANADA

The Chair (Mr. Pat Hoy): Now I'm advised that our 10:30 group has arrived. Ecojustice Canada, if you'd come forward, please. Good morning. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd just ask you to identify yourselves for our recording Hansard.

Ms. Kaitlyn Mitchell: Good morning. My name is Kaitlyn Mitchell and I'm a staff lawyer with Ecojustice Canada. I'd like to begin by thanking you for giving me the opportunity to appear before you this morning to discuss Bill 68.

For those of you who are unfamiliar with our organization, Ecojustice is Canada's premier non-profit environmental organization, providing free legal and scientific services to protect and restore the environment and human health. Since forming in 1990, legal reforms and litigation around approvals of pollution sources for greater protection of Ontario communities and their environment have formed a core part of our work.

To begin, I'd like to be clear that Ecojustice appreciates the need to modernize the approvals process in this province so that desirable, sustainable projects are approved sooner and bad proposals are quickly rejected. However, we believe that changes to the approval system need to be made in a manner that's protective of the environment and human health, and also recognize the importance of public participation and environmental decision-making processes.

The Canadian Environmental Law Association will be presenting this afternoon on the topic of the application of the Environmental Bill of Rights to individual registrations under the proposed environmental activity and sector registry, which is provided for at part II.1 of schedule 7 of Bill 68. Ecojustice supports CELA's position on this point. However, to avoid duplication, my submission this morning will be focusing on, firstly, the legal implications of the proposed environmental activity and sector registry, specifically in terms of the defence of statutory authority, and secondly, our concerns with regard to proposed amendments to the Crown Forest Sustainability Act, which are set out in schedule 10 of Bill 68.

For a more detailed description of our concerns with regard to the modernization of approvals in Ontario, I'd like to invite members of the committee to review the brief entitled Modernizing Environmental Approvals, which was submitted to the Ontario Ministry of the Environment on behalf of CELA—that is, the Canadian Environmental Law Association—Ecojustice and the Canadian Institute for Environmental Law and Policy on April 16, 2010. For your convenience, I have provided a copy of this document along with my brief written submission this morning.

I'd like to begin by noting that a fundamental weakness of the current approval system in Ontario is its failure to address the issue of cumulative effects, including background concentrations and emissions from other neighbouring sources when decision-makers issue certificates of approval or other instruments to individual facilities in this province. This is a serious flaw, given that the cumulative impact of several facilities—including low-risk facilities that are located closely together, as they commonly are—can be significant, and that many areas of this province already face a disproportionately high pollution burden. We believe that in order to ensure adequate protection of the environment and human health, consideration of cumulative effects must be a part of the proposed registration system, as well as the issuance of site-specific approvals. Prior to making significant changes to the existing approval system, the Ministry of the Environment should be required to make it a priority to explicitly incorporate cumulative effects assessment into the regulatory framework governing the authorization of activities that result in the emission of air pollution.

That said, I'm going to focus today, as I said, on two specific amendments that we would like made to Bill 68, which is currently before you.

First, with regard to the availability of civil recourse for members of the public who are adversely affected by activities subject to the proposed environmental activity and sector registry set out at part II.1 of schedule 7 of Bill 68—by way of background, statutory authorization can be used as a defence to a range of civil actions, such as private nuisance, public nuisance, riparian rights and strict liability claims. It bars redress where the Legislature has expressly or implicitly authorized a work that can only be done by causing nuisance, for instance, and no compensation is provided in that statute; that is, where a statute or a regulation explicitly or implicitly authorizes a work to be carried out that can only be done by causing, for instance, a nuisance, the legislation has, in effect, authorized the infringement of private rights.

The reason for our concern is that at present, it's unclear whether activities that are subject to the registration process will be deemed to have statutory authority to carry out the activity. If they are so deemed, then members of the public lose their right to bring civil action against a company operating under the registration process that causes adverse impacts.

It's also important to note that there is currently a crown immunity clause set out at section 177.1 of the Environmental Protection Act. Essentially, what this means is that the regulatory negligence actions are precluded in relation to any matters arising out of, or in relation to, a permit-by-rule system such as the one set out in the proposed registry. The effect of the defence of statutory authority, in conjunction with the crown immunity clause set out at section 177.1 of the Environmental Protection Act, could be to leave members of the public with no recourse to civil remedies for adverse impacts caused by activities subject to the registration system.

0950

Our recommendation is that the committee adopt a clause that explicitly states that the enactment of regulations governing activities subject to the environmental activity and sector registry does not provide for the defence of statutory authorization. The crown immunity clause under section 177.1 of the Environmental Protection Act should not apply to activities subject to the registration and should in fact be revoked.

I'm going to move on to the final issue that I will address today, which is our concerns with respect to the proposed amendments to the Crown Forest Sustainability Act set out at schedule 10 of Bill 68. Again by way of background, the Crown Forest Sustainability Act is the primary statute that guides forest management on public lands in Ontario. It requires that the Minister of Natural Resources ensure that forests are managed in an environmentally, economically and socially sustainable manner. Among the minister's responsibilities under that act is the approval of five-year forest management plans, which must be followed by logging companies.

The Endangered Species Act was enacted in 2007 and came into force on July 1, 2008. Its primary objective is the protection and recovery of species at risk and their habitat. Since the enactment of the Endangered Species Act, the Ministry of Natural Resources has been considering options to bring forestry operations in this province into compliance with the provisions of that act. A one-year exemption for forestry, when the Endangered Species Act first came into force, provided the Ministry of Natural Resources with time to sort out how the Endangered Species Act and the CFSA—the Crown Forest Sustainability Act—were to work together to

ensure the protection and recovery of endangered species, as well as the maintenance of ecosystem health in our forests. Unfortunately, the Ministry of Natural Resources has yet to establish a mechanism for forestry compliance with the Endangered Species Act while properly managing public forests as a whole.

Our reasons for concern are that subsection 2(1) of schedule 10 of Bill 68 proposes to allow the Minister of Natural Resources to deem any mechanism available under the Endangered Species Act—that would include permits, the prescription of CFSA instruments through regulations, or full exemptions from the act—as satisfying sustainable forest management planning requirements under the CFSA. This effectively gives the Minister of Natural Resources complete discretion to nullify not only the protections for endangered species contained in the Endangered Species Act, but also the planning protections that have existed for the past 15 years for them under the CFSA. For instance, the minister could decide to exempt forestry operations from the Endangered Species Act, and this would simply be deemed as satisfying the CFSA's requirements pertaining to sustainable forestry operations.

In terms of a proposed solution to the uncertainty that's created by subsection 2(1) of schedule 10, we suggest that the Lieutenant Governor in Council could simply use its power under clause 55(1)(e) of the Endangered Species Act to prescribe forest management plans generated under the CFSA as instruments under the Endangered Species Act. Forest management plans would then have to meet the criteria under section 18 of the Endangered Species Act, and that includes consideration of whether specific operations proposed would jeopardize the survival or recovery of species at risk. This solution would ensure that industry only has to go through a single permitting process to meet existing legal requirements of both acts.

As I've set out in my written submissions for today, it is possible for the committee to provide for this solution by way of legislative amendments. This could be accomplished by deleting the current draft subsection 2(1) of schedule 10 and replacing it with a provision that states that before forest management plans are approved or amendments to such plans are made, the Minister of Natural Resources must consider them as instruments under subsection 18(1) of the Endangered Species Act.

Those are my submissions for this morning, and I look forward to answering any questions that you may have.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the government. Ms. Jaczek.

Ms. Helena Jaczek: Thank you very much, Ms. Mitchell, for your submission today. First of all, I'd like to say that I'm really pleased to hear that you are in favour of some modernization related to the approval process.

I was wondering: To what extent have Ecojustice and various affiliated environmental legal organizations been involved with this whole consultation? What type of opportunities have you had?

Ms. Kaitlyn Mitchell: We've been fairly involved; specifically, my colleague Dr. Elaine MacDonald, who is our senior staff scientist, has been quite involved in the process.

As I mentioned, CELA, Ecojustice and the Canadian Institute for Environmental Law and Policy did submit a fairly lengthy brief, which you now have before you, back in April with regard to the EBR posting for approvals modernization in the province. Elaine MacDonald has also been involved as a member of the round table that has been meeting, and I believe it meets next on August 10 to discuss this issue.

Generally speaking, it's also a matter that just comes up in our work fairly often because of the number of concerns that we get from concerned community members about approvals that have been issued in their area. It's certainly an area of ongoing interest for us, but, specifically, we have been looking forward to any opportunity to provide comment and input as this process is moving forward.

Ms. Helena Jaczek: In terms of the general thrust of dividing activities into high risk, low risk, some sort of risk analysis, you're basically in favour of that type of a system?

Ms. Kaitlyn Mitchell: Absolutely, yes. In principle, we think that that's definitely a good idea.

With regard to the specific low-risk activities, that will be categorized under Bill 68. We can't necessarily speak to that since we haven't seen a specific list, but we do want to make it clear that, at present, those activities are activities which require a certificate of approval. Therefore, they do carry with them the potential to have adverse environmental effects.

As I mentioned, the cumulative impacts of such activities, even when they are low-risk activities in and of themselves, can be quite significant. We just want to make sure, when those activities are reviewed and they're considered as low risk, that that is considered—that they do have the potential to have adverse impacts and that, cumulatively, they can have quite significant impacts. That should not be ignored.

Ms. Helena Jaczek: To reassure you a little bit on the cumulative impact, for many of us, as individual representatives of our communities, I think that is an issue that has been brought to our attention and to the attention of the Ministry of the Environment. Again, through the consultation process, there certainly is the desire to provide the tools to better capture environmental information in a cumulative fashion and not as separate silos of particular risks.

Looking forward, as you talk about the first proposed amendment that you've put forward, this relates more to public input, specifically, and the ability to have recourse in cases where there is potentially some negative impact.

Ms. Kaitlyn Mitchell: Yes. I would describe it as an access-to-justice issue somewhat. We think that it would be unfair for members of the public who suffer adverse consequences as a result of activities subject to the registration system to be left with no avenues for civil

recourse, and that is a possibility, as I mentioned, because at present section 177.1 of the Environmental Protection Act does bar actions in regulatory negligence against the crown. That, in combination with the fact that it would be regulations that would be describing these activities, does run the risk that civil actions against the companies themselves would be barred as well, and that would effectively leave no rights to civil recourse available for these citizens, and we think that would be highly unfair.

We would like to see a specific provision that just states that that defence, that statutory authority, does not apply to those activities.

The Chair (Mr. Pat Hoy): Thank you for appearing before the committee.

Ms. Kaitlyn Mitchell: Thank you.

ST MARYS CEMENT

The Chair (Mr. Pat Hoy): St Marys Cement, I believe, is in the room. If you would come forward, please. Good morning. You have up to 10 minutes for your presentation. There could be five minutes of questioning following that. I'd just ask you to identify yourself for our recording Hansard, and you can begin.

Mr. John Moroz: Thank you, Mr. Chair and members of the committee. Good morning and thank you for this opportunity.

We believe that your work has substantial potential to enhance the economy and employment in Ontario while safeguarding the province's strong and well-earned reputation for environmental protection.

I'm John Moroz, the vice-president and general manager of St Marys Cement's aggregate business.

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St Marys is a leading manufacturer of cement and related construction products in both Canada and the United States, with our roots planted in Ontario, stretching back over 90 years to our founding in the town of St Marys.

Our business covers southern Ontario from Windsor to Ottawa, and we're proud of the contributions we've made over the years through countless engineering, civic and residential building projects such as the CN Tower, Roy Thomson Hall, Darlington Nuclear, Seneca College and the Sir William Osler hospital in Brampton.

Today our company is one of Ontario's largest cement manufacturers, and our construction materials division literally provides the building blocks of our communities. St Marys is a major investor and employer in the province, currently with 1,200 employees working at our two cement plants, more than 40 ready-mix concrete plants, 22 aggregate operations and our transportation division.

Our highest priority is to operate in an environmentally and socially responsible manner, and our operations reflect the highest standards for safety and environmental performance. We have made substantial investments in the communities where we live and operate.

In 2001 St Marys was acquired by Votorantim, a global cement producer based in Brazil. Since 2001 we have invested literally hundreds of millions of dollars in Ontario to support our cement, ready-mix concrete and aggregate operations.

Most of Votorantim Cement North America's operations are in the US, with facilities all over the Great Lakes states as well as in Florida, North Carolina, Texas and California. Despite this, our company chose to locate its North American headquarters here in Toronto.

In 2008 the global recession presented significant challenges for many businesses. With the downturn in the American cement market, St Marys responded like many companies, with reduced production. We chose to shift some cement production to our Ontario operations while mothballing one of our major US cement plants that supplies the same Great Lakes market.

As Ontario has grown and flourished, so have we. However, intense international competition has presented new challenges to industry and government alike. Ontario companies aren't just competing with locally owned businesses but with large multinational organizations that are looking for opportunities in Ontario. As a province, we're competing against other jurisdictions that want to attract the same investment dollars and associated investment and jobs that we covet.

We believe Ontario has a positive environment for business. However, we are now facing increasing uncertainty, particularly in permitting and approvals processes, and this is a major concern for our shareholders.

We commend the Ontario government for the substantial steps it is taking to create a welcome environment for investment and job creation. The Open Ontario initiative can be a major force to propel our economy forward, be it through tax reform or growing our expertise in clean water technology and helping us pull out of this recession through a major investment in new infrastructure.

The government has had to make some courageous decisions, as it did recently with the Green Energy Act. By ensuring that special interest groups did not create barriers to green energy development, the government took a bold and necessary step to protect the broader public interest.

We strongly support the government's proposed changes to streamline the regulatory environment for business. However, without alignment of the three levels of government, the success of the Open Ontario initiative will be in jeopardy.

Streamlining and modernizing the environmental approval process at the provincial level is a significant step. Strong provincial leadership consistent with the government's approach for green energy is crucial.

We encourage the province to remove unnecessary regulatory overlap that exists between the provincial and municipal levels of government and promote consistency across the province. We strongly believe that this is

fundamental to the success of the Open for Business program. We simply need a clear, reasonable and consistent regulatory environment to justify further investment in Ontario.

Separate permitting powers assigned to municipalities or conservation authorities cause uncertainty and lengthy approval processes. We need clear provincial policies and language that municipalities and conservation authorities will implement through existing tools and legislation such as the Aggregate Resources Act.

The government must not send signals that confuse investors, make Ontario less attractive as a place to build business, and will ultimately deny our citizens—our children and grandchildren—the investment, jobs and opportunities they need to build their lives and their communities.

Following a recent trip to one of our aggregate pits in Aberfoyle, the Honourable Linda Jeffrey, Minister of Natural Resources, wrote, "Ontario's mineral aggregate resources are critical to the economic and social well-being of our province and our people....the working relationship between the aggregate industry and my ministry will serve us well in meeting our collective challenges."

Minister Jeffrey recognized the growing demand for our product, to build homes, schools, roads and hospitals to serve our citizens.

St Marys has been involved in a multi-year licensing and permitting process for a greenfield quarry in Flamborough, and to date has invested over $20 million in the project. Our decision to invest was based on our understanding of the resources, its value to our business and communities, and our ability to meet all technical and environmental restrictions defined under various provincial and municipal regulations.

The project will provide a minimum of 110 full-time, permanent jobs; $80,000 a year in taxation revenue; $4 million to government through aggregate licensing fees over the life of the quarry; and $3 million a year spent locally with small and medium businesses for supplies and services.

However, quarrying is not without controversy, and we typically run into strong local opposition by special interest groups, which may include political, environmental or even competitive interests that do not want a quarry in their backyard. Flamborough is no exception.

The province must stand up for the greater public interest when it comes to aggregate resources. The licensing and permitting process for aggregates in Ontario often includes the expense of millions of dollars and time frames extended beyond 10 years. Since half of all aggregates are consumed by the public and product costs are passed on to the consumer, this is a significant cost to Ontario taxpayers.

We are not asking that the province's environmental standards or technical thresholds be compromised. We are simply asking for a clear, reasonable, consistently applied and predictable process for licensing and permitting of Ontario's much-needed aggregate resources and the removal of duplicate reviews and approvals.

I am raising the Flamborough case as an example where St Marys Cement is involved in a long, arduous regulatory process with multiple special interest groups and duplication of reviews and approvals. We want the province to stand up for the greater public good. This will send a powerful message to investors that the investment climate in Ontario is reasonable and predictable. This is a critical requirement to attract investment to our province and ensure the future growth and prosperity of Ontario. Fixing minor parts of our legislation without a holistic, streamlined view to creating a system that works for business in the long term presents only interim relief for the short term.

St Marys urges the province to consider ways to make the system work better as a whole, as the best way to promote Ontario as "open for business" for both the aggregate industry and other industry sectors.

Thank you for your time today. I would welcome any questions.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the official opposition. Ms. Munro.

Mrs. Julia Munro: Thank you very much for coming here this morning to provide us with this analysis.

I have a couple of questions to ask. I'll start with the issue on page 2, where you talk about the need for streamlining and modernizing the approval process, particularly where there appears to be more than one agency to respond to. You specifically refer to provincial and municipal levels of government, conservation authorities etc. My question to you, then, is, do you feel that this proposed legislation is meeting your goal of having a clearer, more streamlined piece of legislation to work with?

Mr. John Moroz: I think it's a very good start. There are pieces that have made changes to streamline the process. I think it's a good start.

I think the message we would like to send as a company today is that the continued streamlining of the process and removal of some of the overlaying layers of approval authority would certainly allow us to attract investment into the province.

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Mrs. Julia Munro: That goes to my second question, because the comment that you make further down the page about how the government must not send signals that confuse investors is obviously a very critical piece, I think, in having this conversation. It's interesting too, because in the earlier presentation given by the Professional Engineers Ontario they laud the government on the fact that we're moving in this direction of harmonizing with national standards. So it seems a rather interesting comparison here, that on the one hand there's that movement towards harmonization, and on the other hand you're running into issues that would tend to put us in a less advantageous position with our competition in terms of sending signals that confuse investors.

Is this a growing issue for you, or one that you think is going to be ameliorated by the legislation that we're examining?

Mr. John Moroz: We may even be saying the same thing in different ways, because I think the legislation that we see in front of us will take us along that route. I think there has been a substantial amount of change in a lot of different areas over the past four, eight or 10 years, and what it has done is that every time the legislation has changed, it throws a question mark up in front of us: Is there another hurdle? Oftentimes, good legislation is met with people using it for different interests that it wasn't intended for. I think this legislation addresses some of that, is a good start, and by removing the ability to misuse some of the legislation would take away some of the overlapping or the duplication that we're seeing.

Mrs. Julia Munro: And I guess you might view it as a bit of a moving target, then, in terms of trying to meet, certainly when you talk about, on page 3, having spent $20 million on one project—was that the intent when you started?

Mr. John Moroz: In terms of—I don't understand the question.

Mrs. Julia Munro: Well, did you anticipate that it would take more than 10 years and more than $20 million?

Mr. John Moroz: Many of the licences today take that long. The Aggregate Resources Act is a very detailed process, and as you move through the Aggregate Resources Act there are a lot of steps or there's a lot of ability to question.

Mrs. Julia Munro: Just two final comments.

Further down on page 3, when you talk about, "Since half of all aggregates are consumed by the public," could you explain what you mean by "public"? I think I understand, but others might not.

Mr. John Moroz: The provincial government purchases a substantial amount of aggregate through the reconstruction of roads or bridges, hospitals, schools. So the provincial government is certainly a huge consumer of aggregate, and then the municipal governments, through either the municipal buildings or the roads that they look after. So it's one form of government or another, and then there's the private interest. A house, for instance, would be a private interest.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Committee members, none of our presenters have arrived yet and we are a bit ahead. We'll recess until one of them appears.

The committee recessed from 1015 to 1028.

SERVICE EMPLOYEES INTERNATIONAL UNION

The Chair (Mr. Pat Hoy): The committee will now come to order once again. It's my understanding that the Service Employees International Union is here and would present. If you would come forward, please.

Thank you for starting a bit earlier than your allotted time. We appreciate that. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'd just ask you to identify yourself for our recording Hansard, and then you can begin.

Mr. Diego Mendez: Thank you. My name is Diego Mendez and I work with the Service Employees International Union, Local 2.

I'd like to thank the Standing Committee on Finance and Economic Affairs for the opportunity to present today on Bill 68. I'll actually only attempt to address the proposed changes under schedule 9 of the bill and those relating to the enforcement of employment standards.

SEIU Local 2 has about 13,000 members across Canada, and our organizing focus has been on helping workers in the janitorial industry attain labour rights and win a voice on the job.

I just want to give you a little more background on the janitorial industry to understand our position on Bill 68. It is a largely unregulated industry, and many of its workers operate in the shadows. They are often known as the invisible workforce, and they struggle in an industry that's rife with abuses. The vast majority of janitors, especially in urban areas, are newcomers to Canada. For many, English is a second language, and many are unaware of their rights here in this province. It's a low-wage, precarious industry, and while there are many employers who do abide by the ESA, the nature of the industry, which is based on competitive bidding, means many employers are in a race to the bottom to provide services at the lowest cost possible. This drives numerous employers to find ways to avoid ESA compliance, and it's often done through the creation of subcontracting schemes. These subcontracting schemes, in which employees are paid under the table, are deliberately designed to circumvent various laws, including the ESA and the Workplace Safety and Insurance Act. The scheme allows the companies to pay cleaners less than minimum wage and has them working without WSIB and without EI or CPP benefits.

Workers who are put into these precarious situations through these subcontracting schemes are often very fearful of reporting any ESA violations. These workers are the ones most in need of ESA protections, and it's therefore important that it be very accessible to them.

We understand that years of underfunding by previous governments, coupled with an increase in claims, has created a tremendous backlog in claims, and we commend the current government for beginning to tackle this issue and also to explore ways for those who are filing claims as to how their cases can be dealt with in a more expedient manner in the future. We've also been encouraged by the government's willingness to look into ways to tackle the growing problem in Ontario of precarious work, and to also work with stakeholders, including SEIU, at ways of grappling with the underground economy and violations to the employees that come along with it. We are, however, concerned that

in some cases the proposed changes in schedule 9 might, in fact, make it harder for such employees to seek redress to violations by their employers. In particular, we feel that one of the proposed changes, under schedule 9, part 8, section 96.1, could create problems.

The requirement to first take concerns to employers may be a disincentive for many to report violations. Although there are automatic exemptions, it is a potential obstacle for many who will approach this process gingerly and with a lot of fear. For many of these workers who are living paycheque to paycheque, everything will be at risk. We are concerned that this proposed change could have the effect of driving away workers who are looking to report violations, driving them further underground and creating a larger problem with respect to ESA compliance.

As already stated, we believe the effort to address the issue of workers in this precarious economy is commendable and a step in the right direction. However, we feel that the proposed change could further limit access to labour rights instead of its intended goal of making them more accessible. We recommend that the proposed change under section 9 be removed from Bill 68, and we believe that more discussion is merited. We also believe that we can come to a solution with more discussion.

Thank you for your time and consideration. I'd be happy to answer any questions you may have.

The Chair (Mr. Pat Hoy): Thank you, and this round of questioning goes to the NDP and Mr. Prue.

Mr. Michael Prue: How much discussion did the government have with you or your organization, or with labour in general, around this act?

Mr. Diego Mendez: I can somewhat answer that question. The truth is that this was dropped on my desk on Friday, just before heading up to the Bruce Peninsula.

I know my colleague has been in conversation for a number of months. I am not sure how many meetings there have been, but I think he's fairly happy with the amount of discussion that has taken place so far.

Mr. Michael Prue: That colleague would be Victor Costa, would it?

Mr. Diego Mendez: Vic Costa and Ritch Whyman have been in conversation with the office.

Mr. Michael Prue: So what you are in effect asking, then, is for further discussion, because you're not happy with what's in Bill 68?

Mr. Diego Mendez: The one particular part, 96.1. We do think that anything that smells of having to speak to your employer first, even if there are exemptions, is going to frighten people away.

Mr. Michael Prue: I would agree with you, being from Toronto, that the overwhelming majority of people in janitorial service or in that industry are recent immigrants—do you find that there is a fear among them? You've said as much. Do you find that there is a fear of going to the employer to the extent that this ought to be removed, that that step should be taken right out?

Mr. Diego Mendez: I think I see the validity in the idea of approaching an employer first for a solution. In the specific case of the industry where I'm working and janitors, it would be much better if it was removed. The fear is palpable. People are very, very afraid to approach their employers about any kind of violations.

Mr. Michael Prue: How much of the janitorial service, in your estimate, is underground?

Mr. Diego Mendez: It's hard to know for sure. There's certainly a lot. I would say there are thousands of workers. I couldn't give you an exact figure. If I was going to guess, it might be as high as 30%. There's a lot.

Mr. Michael Prue: And these workers are obviously unorganized; they don't belong to the union. Are a great many of them also undocumented people?

Mr. Diego Mendez: There are quite a number who are undocumented. So what often happens is that employers will threaten their employees, make threats around their immigration status even though it actually is not of concern to the Ministry of Labour. They'll certainly threaten them with their immigration status: that they'll be reported, deported etc.

Mr. Michael Prue: Okay, thank you very much.

The Chair (Mr. Pat Hoy): Thank you for your presentation before the committee.

Mr. Diego Mendez: Thank you for your time.

The Chair (Mr. Pat Hoy): We don't have any other presenters in the room at the moment, so we shall recess until one of them arrives.

The committee recessed from 1039 to 1048.

The Chair (Mr. Pat Hoy): The standing committee will resume once again. We've had a request that the presentation at 10:45—there was another person who also wanted to speak, so we have agreement that you would have five minutes. There would be no questioning, though.

Mr. Eoin Callan: Right.

The Chair (Mr. Pat Hoy): If you would just mention your name for Hansard, and then you can begin.

Mr. Eoin Callan: Good morning. My name is Eoin Callan. I'm with the Service Employees International Union Canada, which is a national organization. I'd like to start by thanking you very much for the opportunity to address the committee. It's an honour, as always.

As you may be aware, SEIU is the fastest-growing union in Ontario, the fastest-growing union in Canada and the fastest-growing union in North America, with 2.2 million members continent-wide. We represent more than 60,000 members here in Ontario, including more than 10,000 in the property services sector and the janitorial sector, which you will have heard a little bit about.

We also represent an additional 40,000 to 50,000 members who work in a variety of sectors, principally in the service economy. As you'll appreciate, the service economy is the fastest-growing segment of our economy in Ontario right now and indeed in Canada, but it's also the segment of the economy where we see the highest incidence of precarious employment, and where we've begun to see the emergence of an underground economy

in some key sectors. That's one of the reasons I wanted to take the opportunity to applaud the work done by the minister on the Open for Business bill that we have before us today, and in particular to praise the efforts of the Minister of Labour and his staff in terms of the diligent work that they've done in the preparation of this bill, and in particular to single out the parliamentary assistant and his staff for the excellent work that's been done on this bill.

We see this bill as part of the Premier's broader Open Ontario initiative, which aims to create a positive environment for business, attract investment and, above all, create jobs, which we see as shared goals that stand to benefit all Ontarians. In particular, we think the effort to cut red tape and to reduce any unnecessary and undue burdens on business are positive steps and steps, in turn, that should help to stimulate jobs, which again, stand to benefit all Ontarians.

Indeed, as part of his broader Open Ontario initiative, the Premier has indicated that he would like to foster high-skilled, knowledge-based jobs as well by encouraging foreign students to study in Ontario at our colleges and universities. He has particularly reached out to overseas businesses as well. We think, in the context where we are attracting and inviting others to come to Ontario to invest and study, it's particularly important that we ensure that when cutting red tape we don't create loopholes unintentionally, so that we ensure that if we're bringing foreign students, we deal with the risk that they might be sucked into the underground economy, or that they or their families might get trapped in the underground economy.

Importantly also, when we attract businesses, we ensure that they operate and compete on a level playing field, and when they come to Ontario they're expected to observe the rule of law, but they also know that they'll be competing against other businesses that respect the rule of law.

That's one of Ontario's key selling points as a jurisdiction for investments. There are lots of other markets out there in the world that might be growing at a higher rate or maybe even offer larger markets—they probably offer you lower labour costs—but what they rarely, or not as adequately as Ontario, provide is clear, transparent rule of law that you know is consistently enforced.

That is one of the incentives that brings many of the large employers in the service sector to Ontario. When we talk to companies like Sodexo, who are listed in Paris, or Compass, who are listed on the London Stock Exchange, or large property service managers like CB Richard Ellis, a large, private company out of the US, we know that that level playing field is critically important to them and we know that in many markets they enter they're concerned—in the service sector in particular—that they will compete against incumbents who are not respecting the rule of law, who are exploiting loopholes in local jurisdictions and who are undercutting employment standards in particular in these very labour-intensive service industries.

That's why we think that the efforts and determination on the part of the Ministry of Labour and its partners to address the backlog of employment standards is vital because we think the lack of processing and enforcement of claims in employment standards has been a key impediment to the creation of a level playing field in this province. So we think that addressing that backlog is critically important to creating the kind of climate that we want to attract businesses and be ready to throw open our doors to all comers—

The Chair (Mr. Pat Hoy): You have about a minute left.

Mr. Eoin Callan: With a minute left, I suppose we would single out one aspect of the bill for closer examination, and that is the creation of a requirement that those filing claims under the Employment Standards Act first attempt to redress these issues with their employer. We've seen in British Columbia, where a similar rule has been applied, that this has acted as a deterrent to people to file claims. It has been a source of intimidation.

We've taken a look and we can see that there's an acknowledgement and an understanding of this possible deterrent, and that there has been an effort to address it by creating automatic exemptions. So people filling out claim forms, people for whom English may be a second language, have an opportunity to tick a box that indicates that for a variety of reasons, they're not comfortable bringing this issue to their employer first; that their employer, in their view, has violated the law and they're seeking redress from government. We see that as a positive step that is addressing the imbalance that was perhaps created in British Columbia, and we just urge close attention to this aspect of the legislation as it's translated into regulation and it's implemented to ensure that this balance that we see being sought is ultimately achieved. Thank you.

The Chair (Mr. Pat Hoy): Thank you.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair (Mr. Pat Hoy): Now I call on the Canadian Federation of Independent Business to come forward.

Good morning. I'm certain you know how this goes: You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. I'll just ask you to identify yourself for our recording Hansard, and then you can begin.

Mr. Satinder Chera: My name is Satinder Chera. I'm the vice-president for Ontario with the Canadian Federation of Independent Business. On behalf of CFIB's 42,000 small and medium-sized business members in Ontario, we appreciate this opportunity to appear before you this morning on Bill 68.

Having appeared before this committee in the past, I know that members will know that the sheer volume, cost and complexity of regulations is obviously a major challenge for small firms. As we've discussed with this

committee in the past, we don't dispute the fact that, look, every government regulation has as least one laudable public purpose; in other words, it's a good thing. But from our perspective, I think an individual regulation can be a bad thing if it fails a test of effectiveness and cost-benefit analysis. The sum total of all regulations can be a bad thing if it exceeds the government's capacity to administer them or, certainly, exceeds SMEs' capacity to cope with them.

In the kits before you there are a series of documents that I'll be referring to throughout this presentation, starting with the left side.

We certainly applaud the McGuinty government for bringing in Bill 68. We think that it is a step in the right direction in terms of helping to reduce the administrative costs associated with complying with a series of government regulations. We were obviously very complimentary of the government's Open for Business initiative when it was announced some years ago. We certainly feel that things should have obviously gone a lot faster, but this is at least a good start and a step in the right direction. Certainly, I think the ministers involved in bringing this bill forward should be complimented as well.

With this regulation, I think there's obviously a series of different issues involved. One, of course, is employment standards. I think that in the discussions that we've had with the Ministry of Labour in the past, we've certainly made it very clear to them that there are often times when an employer will not know for literally months at a time whether or not there's been an employment standards allegation of a violation of the act made against them. I think, to their credit, that in this instance the ministry has listened. What they have done, I think, is quite sensible, which is to ask for more detailed information from complainants but then to work with the complainants and the affected business party to try to resolve that issue as opposed to having it dwindle, or rather, stay stuck in the long backlog which, obviously, the ministry is now trying to address.

That being said, we think that certainly, while this is a step in the right direction, there are obviously a number of pieces that are still missing as part of the government's overall plan to address regulations. As we've discussed before with this committee, there are a number of models that are currently in play in and across Canada where governments have taken steps to address the regulatory burden.

As a start, we have often stated that you cannot address a problem unless you know how big it is. To that extent, on the right-hand side of the kit there is the most recent study that the CFIB put out in January of this year, Prosperity Restricted by Red Tape, Second Edition. We had initially put a report together in 2005 where we looked at the actual cost of complying with government regulations at all levels of government, and as of this year we've estimated that cost to be at around $11 billion in Ontario. Again, that's at all levels of government. Certainly you can appreciate that for smaller firms that do not have HR departments, that do not have legal departments, that are unable to afford consultants to help them comply with government regulations, this can often be a very daunting task.

I think that in recent weeks we've seen a series of regulations or a series of changes that have gone into effect that have obviously had a huge impact on businesses—and then thereby you've also seen a reaction from consumers as well. So I think that one of the first things that we would say is that while this is a step in the right direction, we think the government should certainly go further.

If you look at British Columbia, they have a model in place where they counted up all the regulations they had on the books and then they reported on that number on a quarterly basis, just to indicate how big the problem was and in which direction it was headed. Across to the other side of the country, in Nova Scotia, you have a different system at play. What they've done is they've counted up all the number of hours that it takes a business owner to comply with government regulations and they have then set benchmarks to reduce the number of hours that they have to spend filling out government paperwork. That model has actually succeeded, even with the recent change of government in Nova Scotia.

That's, I think, the first thing that we need to do.

1100

I think the second thing is to be able to report this on a regular basis. We know that the government had been looking at a numbers count; we haven't seen anything official from the ministry. Certainly, if there is something to be shared, we think that that would be a good start, to at least get out there, "Here's how big the problem is right now."

The Premier has talked about reducing the burden by 25%. The challenge for us is, 25% of what? From what benchmark is the government measuring that decrease? More clarity on that would certainly be well received.

Also, there is the fact that for these types of things, initiatives that governments put in play, there are obviously a lot of issues that the government has to contemplate. Priorities change and focuses change. We think one of the other lasting legacies that the government can put in place here is to actually legislate in terms of having a model where we actually count up all the regulations, but then we measure them on an ongoing basis and we publicly report that. It doesn't matter what government is in office; there would be a rule in place that would say that ministries are required to do that.

It's not lost on us that you have a higher sense of formality when it comes to budgets, in terms of a budget document being presented, but you don't have the same sort of accountability or transparency when it comes to regulations. One of the arguments that we've made in the past is that regulations certainly are a hidden form of taxation. Governments pass these rules, but it's the businesses that obviously have to comply with them, and the cost can be, as I said, quite monstrous for smaller firms.

In terms of going forward and measuring the regulatory burden, we think that that's absolutely critical. Institutionalizing the measure by reporting it regularly to the public is also important. Focus on areas that are most economically productive. Carefully consider the need for all new regulations with the impact on small business. Keep compliance flexible and provide basic examples and guidelines for what constitutes compliance and non-compliance.

I'll give you an example. Recently, we had the workplace violence and harassment legislation come out. The ministry put together a nearly 50-page manual. Obviously, we were looking for something a lot slimmer that would get to the key issues that our members had to comply with, but to their credit, they also put in place a template. What they essentially said was, "Look, if you can't go out and afford a consultant or if you're unable to put a policy together yourself, here are some basic guidelines for what the government would consider as having complied with the regulations. You simply have to read the information, include the relevant information for your business and then have it posted in an area where your employees can see it." That was one of the major recommendations that we made, and it was good to see that Minister Fonseca adopted that recommendation.

I think we need to see a lot more of that. Regulations are simply put out, sort of like a one-size-fits-all, by and large, and from our perspective, we really need to get away from that model. We've seen some examples recently, but they haven't gone far enough.

Overall, Bill 68 is a step in the right direction. Obviously, the government can go a lot further and leave a lasting legacy in an area that our members continuously tell us is a major concern for them.

Mr. Chair, with that, I'd be happy to take any questions that the committee might have.

The Chair (Mr. Pat Hoy): Thank you. You have impeccable timing.

The questioning goes to the government. Mr. Sousa.

Mr. Charles Sousa: Thank you very much for your presentation. We do appreciate the partnership and the ongoing participation with your organization in developing Bill 68 and doing some of these amendments.

Can you elaborate a little bit on your activities with the Ministry of Labour in terms of working towards the modernization that we've put forward?

Mr. Satinder Chera: Yes. In terms of this actual legislation, Bill 68, the ministry had contacted us many months ago, before the introduction, to say, "Look, we've heard from you often that employment standards are a huge concern. If we were to look at modernizing that piece of legislation, what would be one of the areas that you would see as a positive?" We raised the issue of the huge backlog and the concern that we hear from members in terms of, "I found out almost a year later that there was a complaint that was lodged against me." Certainly, we have been working in certain areas with the ministry.

That being said, I don't want to leave the committee with the impression that everything is hunky-dory with the Ministry of Labour. There are some major challenges that we face. It often appears that one step forward can sometimes be two steps back in a number of areas, and we've shared those with the committee before. But we're hoping that with this legislation, this will be a change for the better.

Mr. Charles Sousa: How do you see the registration process benefiting small business?

Mr. Satinder Chera: Sorry?

Mr. Charles Sousa: The registration process now, the proposed registration to ease the process—do you see that as a positive?

Mr. Satinder Chera: Absolutely. Wherever government can reduce the hoops and hurdles that business has to face in order to comply with government regulations, it's obviously a good thing.

As I've mentioned on previous occasions, small business owners often work side by side with their employees on a daily basis, and it's only in the evenings or on weekends that they ever get around to looking at what new regulations or laws they have to comply with. So to the extent that you can make it easier for them to digest that information, in a form that's readily available and easy to understand and comply with, that's a good thing. Certainly an online tool is something that we've advocated for.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

PARKDALE COMMUNITY LEGAL SERVICES

The Chair (Mr. Pat Hoy): Now I call on Parkdale Community Legal Services to come forward, please.

Good morning. You have 10 minutes for your presentation, and there could be up to five minutes of questioning following that. I would ask you to identify yourselves for our recording Hansard, then you can begin.

Ms. Irina Ceric: My name is Irina Ceric. I'm a staff lawyer at Parkdale Community Legal Services.

Ms. Arvindi Sukhram: My name is Arvindi Sukhram. I'm a law student at Parkdale Community Legal Services.

The Chair (Mr. Pat Hoy): Go ahead.

Ms. Irina Ceric: Good morning. Parkdale Community Legal Services, or PCLS, is pleased by the government's commitment to address the backlog in claims and improve the employment standards claims process. The number of complaints against employers for unpaid wages is on the rise and so is the backlog in dealing with these violations, so the changes in schedule 9 of Bill 68 provide a needed legislative framework for the employment standards modernization strategy and the Ministry of Labour's efforts to resolve the 14,000 claims that are currently backlogged.

These efforts are certainly commendable. We at Parkdale see the impacts on workers who must wait a year or more to have their complaint heard. We definitely see workers who wait up to two years to get unpaid wages which should have been paid in the first place.

We do believe, however, that the legal changes contemplated in Bill 68 and some of the changes proposed under the employment standards modernization strategy will not address the causes of the backlog or meet the goals of addressing and preventing further backlogs. We believe that some of the strategies being proposed would add additional burdens and barriers to workers. In our experience, workers already bear substantial burdens in obtaining their employment standards rights, as I'll describe in a moment.

Workers cannot take on more of the enforcement of minimum standards, particularly without support, as is unfortunately proposed under schedule 9. This perspective was reiterated by community caseworkers in focus groups held by the Ministry of Labour, as well as by people engaged in precarious work surveyed by the Workers' Action Centre, who you'll be hearing from this afternoon.

The Ministry of Labour's employment standards modernization strategy in schedule 9 will make substantial changes to the employment standards complaints process. We believe that comprehensive consultation is required on such substantial changes, and we actually recommend the removal of schedule 9 from Bill 68.

Alternatively, we believe that meeting the goals of addressing the employment standards backlog and improving the claims process requires the establishment of supports for workers, not barriers.

We make the following four recommendations.

First, do not require workers to attempt self-enforcement before filing an employment standards claim. Bill 68 requires workers to first try to enforce their ESA rights with their employer before filing an ESA claim. That means workers have to identify their ESA rights, determine what rights were violated and the amount of wages owed, write up a request for these unpaid wages, and contact their employer to request ESA entitlements. Only if the employer refuses can a worker then file a claim with the government. Bill 68 allows for some workers to be exempted from this requirement. We believe this requirement for a first self-enforcement step will create barriers to workers seeking unpaid wages and reduce the effectiveness of the branch in detecting ESA violations. British Columbia introduced mandatory first-step self-enforcement, which they called self-help, requiring workers to seek employer compliance prior to filing a claim. After introduction of this requirement in 2002, claims dropped from over 12,000 a year to between 3,400 and 6,500, an immediate drop of 46%. In 2009, seven years later, the total was still 42% lower than what was reported in 2002, even though the labour force had grown by 15% during that time. Policy analysts and advocates from BC argue that it is not because the workers are getting their unpaid wages; rather, the decline is due in large part to barriers created by the mandatory self-help step.

1110

A requirement to seek compliance from employers effectively requires workers to have access to the Internet to learn about their rights; knowledge about how to apply abstract legal rights to their specific conditions; the ability to gather evidence to prove their case; and the opportunity and facilities to assemble, package and deliver this material to former employers. Most significantly, mandatory self-enforcement requires that workers will have the skill set and the confidence to confront their former employer about violations. None of these assumptions are borne out by our experience assisting workers in a community-based legal clinic.

The second recommendation: Do not require workers to provide specified information on claims before the claim will be accepted. Bill 68 would require workers to provide certain information about their employer and violations and state their case before the claim is even accepted. We believe that the information requirement will create barriers to workers, particularly those with language and literacy barriers. Rather than make this information a requirement, we believe the Ministry of Labour should provide assistance to workers making ESA claims to ensure that the information that is necessary for effective and efficient claims investigation is provided on the ESA claim form.

In our experience, workers are unable to produce written information, evidence, and make their case, because they require help to do so. The Ministry of Labour's employment standards complaint system relies heavily on individuals being able to access their website. In fact, employment standards stand alone in the regulation of employment rights in having no government- or quasi-government funded assistance for workers who believe their rights have been violated. The government provides direct and indirect funding for information, education and legal support in the areas of human rights, workplace safety and insurance, and health and safety, but few legal supports for workers requiring assistance in ESA matters exist. Ontario's community legal clinic system provided ESA representation in very few cases and gave advice to just over 850 workers in 2008. There are no legal aid certificates available for employment standards matters, and the fact that there's a maximum $10,000 cap on employment standards claims means that very few private bar lawyers would represent workers on ESA matters.

As our third recommendation, we ask that you exempt complainants from time limits on submitting evidence and establish clear and transparent time limits for employers. Rather than providing new powers to employment standards officers to set time limits for employers and workers to provide information or require participation in decision-making, we believe the Ministry of Labour should set clear and transparent time limits for employers to respond to complaints of ESA contraventions. Where the employer does not respond, the

employment standards officer shall render a decision on the basis of the complaint. This is the approach already taken in human rights cases and in Small Claims Court, and would better serve to reduce the backlog and expedite the claims process in employment standards.

Finally, our fourth recommendation is related to facilitated settlements, and this is the recommendation that I want to focus on. Section 101.1 of schedule 9 of Bill 68 will give employment standards officers new powers to "attempt to effect a settlement." Under the current section 112 of the ESA, the employer and employee may enter into a settlement, but it is not the role of the officer to attempt to negotiate, promote or broker settlement agreements. The proposed changes would allow officers to facilitate settlements. Employers and employees would be given the option of discussing settlement with the officer playing a mediator role. Should settlement not be reached, the officer would resume investigation and decision-making.

We argue that combining settlement negotiation and adjudication in an investigation, with the ESO playing both roles, is not a fair process. In other regimes, in particular human rights regimes, and most courts as well, mediation and adjudication are kept completely separate. It is very difficult for parties to have negotiations without prejudice if the decision-maker is also the mediator. Workers and employers may feel they cannot refuse settlement negotiations lest they be penalized in the final decision on their claim.

Additionally, ESA claims investigations involve unequal parties. Facilitating settlement is contrary to the remedial purpose of the legislation, to address the power and balance between employers and employees.

Similarly, workers' advocates in the human rights process find it hard to mediate settlements with small workplaces because the situation between employer and employee often becomes poisoned or very personal. In fact, the majority of employment standards claims involve workplaces of less than 50 employees.

Mediation is also usually used to avoid lengthy and resource-intensive court proceedings. Facilitating settlement in the ESA process may not provide any time and resource savings in comparison to decision-making. In fact, it could take the same time in going back and forth between parties facilitating settlement as it would to hold a decision-making meeting and render a decision by an ESO. Rather than offering the employer a carrot of settlement at less than minimum standards, institute a stick approach with enforceable penalties for non-compliance that would ensure workers get the wages owed to them.

The ministry says that the mediation would be optional and used in cases where violations are not clear or in cases of "he said, she said." But it is these cases, where employers are trying to evade or avoid the ESA—so, for example, misclassification of workers as independent contractors; work paid under the table—these are the less straightforward cases. In fact, workers in these kinds of cases often have only their experience and don't have any written documentation, especially in more informal work arrangements. In other words, it will be these situations, which are most in need of regulation, that will be shifted to mediation.

Settlements would generally be below minimum standards. Establishing a role for ESOs to facilitate settlements institutionalizes the contracting-out of minimum standards, which is contrary to the act. Moreover, institutionalizing a role for the ESO doing the facilitated settlement risks leading to general lowering of the floor as employers come to expect that they can settle for less than minimum employment standards through this process. We argue that it would pay repeat offenders to settle claims to avoid detection and penalties.

In other words, institutionalizing facilitated settlements is a slippery slope. Even with the principles or criteria to determine what cases will be mediated, there develop operational imperatives on individual ESOs to close files. The early 1990s saw just such a spike in ESA claims and resulted in a process where ESOs were compelled to settle cases just to close files. Without additional resources, we fear the pressure will be again on ESOs to settle more cases and close files, reducing the enforcement effectiveness of the branch.

In conclusion, Parkdale Community Legal Services believes that the modernization strategy shifts the model of employment standards enforcement from detection of violations and enforcement of minimum standards to dispute resolution between employers and workers. Shifting to even greater self-regulation by employers will result in more violations going unreported and unenforced. This will create a downward pressure on employers who do comply with employment standards as they compete against employers who do not. Compliant companies will get priced out of the market by substandard employment conditions, and practices of non-compliance will spread and become permanent features of a restructured labour market.

Bill 68 may make Ontario open for business but it will be closed for workers seeking minimum employment rights. To open the doors for effective employment standards, schedule 9 should be removed and the Ministry of Labour should shift resources to provide assistance to workers filing employment standards claims.

Those are our submissions. I am pleased to take any questions you may have. Thank you, Mr. Chair.

The Chair (Mr. Pat Hoy): Thank you. The questioning goes to the official opposition, Ms. Munro.

Mrs. Julia Munro: Thank you very much for coming and providing us with this analysis.

I just want to ask you about some figure issues, maybe, and that is the question of, I guess, rogue employers. What happens to someone, then, who finds themselves in that position? Let's assume that, obviously, there isn't going to be self-enforcement as the bill contemplates. What happens in a process where an employee does make application, say, to ESA? Does the ministry

have much ability with regard to the treatment of employees in a rogue employment setting?

Ms. Irina Ceric: I'm not certain exactly what you mean by "rogue employers." I'm assuming, then, that employers that may have changed—let me tell you about the examples that we see: employers who close down one business only to start a very similar business under a different name; employers who change offices; employers who basically disappear. I think in those cases, we do have very limited enforcement options. Even when we can then find the employer—for example, find the directors and have a claim issued against them personally—enforcement is a huge problem. The enforcement rate for employment standards is about 23%. I think a lot of that 77% that doesn't get enforced is exactly these kinds of employers, who have learned how to sort of get around the limited enforcement system that exists, where claims go to a private collection agency if the employer doesn't pay. They don't have the same enforcement powers that a court does, unfortunately.

Mrs. Julia Munro: Just to follow up on that: In your opinion, how big an issue is this? When we look at the lineup of people wanting to be heard, with legitimate concerns—how big is this issue of the people who change addresses or change names, in relation to that 20,000 people who are lined up?

Ms. Irina Ceric: The 14,000—that's just the backlog. That's not even contemplating the cases that are coming into the system which are not considered backlog.

1120

I think the situation of rogue employers is certainly a large part of that, but a lot of other problems, I think, are much more prosaic. I think a lot of this is just about the timelines for investigation: the fact that ESOs are often overburdened and that it takes months for them just to even look at a case. But I think the numbers are also, despite the fact that they're huge in the sense that the system is backlogged, just the tip of the iceberg.

I think there are a lot of employees who never make a claim, either because they don't know that they can or because they try and do it on their own, it's too hard and they can't get help. I think there's a huge need for enforcement of employment standards in Ontario.

Mrs. Julia Munro: Some time ago, there was the issue of making sure that employment standards were visible, in different languages and things like that, which were obviously all intended to try to open up that avenue. How successful is that? I mean, obviously, in one of the rogue employment situations they're not going to be posting signs. But in the others, would you say that that process has worked to the benefit of employees?

Ms. Irina Ceric: As I said, I think it's commendable. I mean, the employment standards branch does provide a poster which is supposed to be posted in every workplace in Ontario. It's available in different languages as well.

I think where the problem comes in is not necessarily that information gets out there, but again, it's about enforcement. Even if workers are aware of some of their rights—and often, not all of their rights or how to actually articulate them—as per the statute, the bigger issue is translating that into a claim, getting the assistance in translating that into a claim and then enforcing it if that claim is actually upheld. So I think there's an information problem on the one hand, but I think there's an even bigger problem in terms of translating that information into action for both individual workers and for industries as a whole in terms of doing workplace inspections and not waiting for individual employee claims to investigate employment standards.

Mrs. Julia Munro: My final question, then, is: Is there, as you understand it, some sort of risk management in terms of—are there areas that would be more prone to this kind of abuse than others? Are you aware of the ministry making that kind of assessment, given the backlog?

Ms. Irina Ceric: In terms of risk management, I think that there has been an attempt to address certain industries where we know that there are widespread violations. I think the changes to the act in the last several years around temporary agencies or live-in caregivers are good examples of that. But I think there are also huge risk management issues in terms of particular communities: workers who are new immigrants, workers who don't have strong English or French skills and, again, workers who are working in the industries that remain very subject to these kinds of problems, like the construction industry, the garment industry and workers working at home or for multiple employers who are seen as independent contractors even though they're actually employees. I think there's still a wide range of sort of informal or not-quite-standard employment situations that are just left out of the act in terms of effective enforcement.

The Chair (Mr. Pat Hoy): Thank you, and thank you for your presentation.

Ms. Irina Ceric: Thank you.

The Chair (Mr. Pat Hoy): We will recess until 1:10 this afternoon.

The committee recessed from 1128 to 1315.

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will come together for this afternoon's meeting.

WORKERS' ACTION CENTRE

The Chair (Mr. Pat Hoy): Our first presentation will be by the Workers' Action Centre; if you'd come forward, please. You can sit anywhere along there. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. Just identify yourselves for our recording Hansard and then you can begin.

Ms. Sonia Singh: I'm Sonia Singh from the Workers' Action Centre.

Mr. Raul Aguilera: My name is Raul Aguilera. I'm a member of the Workers' Action Centre.

Ms. Sonia Singh: On behalf of the Workers' Action Centre, I'd like to thank the members of the Standing

Committee on Finance and Economic Affairs for hearing our deputation today.

My colleagues from Parkdale Community Legal Services earlier submitted to the standing committee a joint submission from our organizations regarding schedule 9 of Bill 68.

We are here today to voice our opposition to the changes to employment standards in schedule 9 of Bill 68, which we believe would create more barriers for workers making employment standards claims while making it easier for employers to avoid paying what they're required to under the law.

These changes that are being contemplated or introduced under Bill 68 would profoundly restructure employment standards enforcement in this province. The introduction of mandatory self-enforcement of ESA rights, facilitated settlements, and requiring information and case explanations from workers before claims can be filed will only place more burdens on to workers who we feel are the most vulnerable and have the least resources when making a complaint.

Such fundamental restructuring of investigations of employment standards requires a much broader consultation than is possible in this committee's review of this omnibus bill. We therefore recommend that schedule 9 be removed altogether from Bill 68.

Just to give you a bit of an introduction, at the Workers' Action Centre, we receive calls from and work with hundreds of workers who are facing violations of their basic rights at work. Over the last 10 years, we've worked to highlight the rise in precarious work, the rise of low-wage jobs, and the increasing spread of employment standards violations. A recent survey that was profiled in the Toronto Star two weeks ago—it was a survey of workers in Chinatown by the Chinese Interagency Network—found that violations were the norm and not the exception. This has been our experience in workplaces across Ontario.

It's in this context that we are seeing complaints rise at the Ministry of Labour, and the ministry is experiencing a significant backlog of claims. It means the workers we are working with are often waiting for more than a year to have their complaints heard. That's not even to get basic wages. That, if they get them at all, will take even longer.

We know that the majority of Ontario's six million workers rely on basic employment standards protections as their only protection. It's workers in low-wage and precarious jobs, who are the least able to negotiate their wages and working conditions, who are in the most need of accessible, effective and enforced employment standards. We know that the ministry realizes the system needs to be improved, yet they're bringing in changes that would add additional burdens and barriers for workers instead of making it easier for workers to get help.

I want to speak to mandatory self-enforcement. Bill 68 would require workers to first try to enforce their ESA rights with an employer before filing a claim. Only if the employer refuses can workers file claims with the government. We use the example from an article in the Toronto Star this morning: If someone has been robbed, we don't force them to go and confront the thief and ask for their property back before they can go and make a complaint with the police, but this is in effect what Bill 68 asks the worker to do.

Raul Aguilera, a Workers' Action Centre member, is going to speak a little more to this issue.

Mr. Raul Aguilera: Hi. My name is Raul Aguilera. I'm here today because I feel it's important to stop changes in Bill 68 that would put more responsibility on to employees to resolve problems of unpaid wages with their employers.

I had an experience in Vancouver where my employer refused to pay my salary. Before making a complaint with employee standards, it was a requirement that I had to talk with my employer.

Requiring workers to go back to their employers before they can make a complaint is unreasonable and very intimidating to workers, and sometimes could even expose workers to violence and intimidation. In my case, when I visited my employer to ask for my wages, he refused to talk to me and he pushed me. I never expected that situation. This physical assault made me feel very frustrated and alone. There was no respect for my rights.

If Bill 68 goes ahead, many workers in Toronto will face the same situation that I did. Workers already face a lot of barriers to making complaints. People are afraid to speak out for their rights. In many cases, when workers speak to their employers about their rights, they are afraid. A mandatory self-enforcement step means that to make a complaint for unpaid wages, workers must already have left their jobs or be prepared to be fired for confronting their employers about ESA violations.

Introducing mandatory self-enforcement will result in many workers walking away from seeking wages, as was the case in British Columbia. After British Columbia introduced mandatory first-step self-enforcement in 2002, claims dropped from 12,000 per year to between 3,400 and 6,500, an immediate drop of 46%. In 2009 the total was still 42% lower than was reported in 2002, even though the labour force grew by 15% over that time. Policy analysts and advocates from BC argue that it's not because workers are getting their unpaid wages. Rather, the decline is due in large part to barriers created by the mandatory self-help step.

1320

The mandatory requirement to talk to your boss will not work any better in Ontario than in BC. We want the government to be aware of the consequences of this change. We ask that the government not make this modification to the basic law that protects workers in Ontario.

Thank you.

Ms. Sonia Singh: The Ministry of Labour consulted about these proposed requirements with a diverse group of workers, community legal workers and front-line workers in May of this year. In both of the focus groups, participants stated unequivocally that contacting an

employer prior to filing a claim should remain entirely voluntary.

The Ministry of Labour is proposing some exemptions for groups of workers or certain situations, but there are many workers who would still face substantial barriers in contacting their employer. Further, we're very concerned that the proposed exempted workers and situations will simply create a confusing patchwork that will itself become a barrier to people understanding how to proceed.

Just to reiterate, we strongly recommend that workers must be able to voluntarily choose self-enforcement without losing their right to file an employment standards complaint, and we urge the removal of this requirement from Bill 68.

Bill 68 also would require workers to provide information about their employer and arguments about their case before a claim would be accepted. However, there is no commitment in this bill to provide support to workers filing claims. While the intent of this provision is to reduce the amount of time that employment standards officers spend obtaining information from workers during the investigation, this assumes that the claim form is not being filled because workers have access to the required information but for some reason are not providing it. In our experience, workers are unable to prepare or produce written information and make their case because they require assistance to do so. It's very challenging for workers to get access to information about their ESA rights, interpret these rights to their situation, calculate the wages that are owing to them and make complex legal arguments, all without support. Many workers that we come across at the Workers' Action Centre face barriers due to verbal and written English language skills, computer literacy and legal literacy.

Employment standards is one of the only areas where there is no government- or quasi-government-funded assistance and there are few other legal supports for workers requiring assistance in ESA matters. One of the most effective strategies, therefore, to streamline the process and reduce the backlog would be to provide, as a first step in the claims process, assistance to workers to prepare their claims so that investigators can expeditiously adjudicate the matter. We therefore urge that specified information not be made a requirement before a claim is accepted and that the ministry instead provide assistance to workers filing claims.

I want to speak briefly to the issue of time limits. Bill 68 would enable officers to require employers and employees to provide evidence within time limits set by the officer and would empower officers to make decisions on claims when either party fails to attend the decision-making meeting or provide evidence on time.

We have seen that it is much more difficult for employees to provide documentary evidence than it is for employers. Employers are required to maintain certain employment records. Workers may not have access to pay records and employment contracts, and they must rely in many cases on their own experience. Putting that experience in writing is often a difficult process for some workers. Furthermore, employers have greater access to human resource professionals and legal services in preparing submissions.

Therefore, it's our position that complainants should be exempted from time limits on submitting evidence. We do support the establishment of clear and transparent time limits for employers. We would suggest that employers be given 20 days to either resolve the matter with the employee or provide submissions contesting the claim. When an employer fails to respond or provide submissions, then the ESO should render decisions on the available information provided by employees.

My colleague earlier this morning spoke to our joint concerns over the facilitated settlements contemplated in Bill 68, schedule 9. I won't speak further to that other than to say that we also urge that facilitated settlements of ESA claims by ESOs, or employment standards officers, not be introduced and the current rules on settlement be maintained.

To conclude my remarks, we are very concerned that rather than reducing the backlog and encouraging employer compliance, changes to employment standards through Bill 68 will only create more burdens on workers and barriers to unpaid wages.

It's our experience that workers already bear a substantial burden in obtaining their employment standards rights and cannot take on more of the enforcement of minimum standards, particularly without support, as is provided through Bill 68.

Bill 68 may make Ontario open for business, but it will be closed for workers seeking minimum employment rights. To open the doors for workers to get unpaid wages, schedule 9 of Bill 68 should be removed and the Ministry of Labour should shift resources to provide assistance to workers filing employment standards claims.

Thank you very much for hearing our deputation.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning goes to the NDP and Mr. Prue.

Mr. Michael Prue: Thank you very much, and thank you as well for the press conference. You guys did a pretty good job in there.

One of the things that government members are saying is, "It's okay, we're going to exempt a whole bunch of people from having to go and confront their employers." They've listed them off but for the life of me, I don't know how this is going to work. They're talking about young workers. Have they discussed with you what the ages for young workers are? Is it someone under 21? Is it someone under 25? Have they discussed that at all?

Ms. Sonia Singh: No, we haven't heard any details about how some of those exemptions would be interpreted, and we shared that concern. Who determines, for example, language barriers? Who determines how much of a language barrier someone needs to have in order to be exempted? Our concern is that these exemptions will create a whole patchwork that is a very confusing

framework, and furthermore that there will be no appeal rights. If someone is determined to be too old to be a young worker for example—

Mr. Michael Prue: Or how about too old? Why not old workers? I don't understand.

You've already touched on the language barriers; have they discussed how they're going to test that?

Ms. Sonia Singh: No, we haven't heard any details on that, and that is a big concern of ours: How would that be determined and who makes that determination? If you don't agree with the determination, there's no right to appeal. You just would not have the option to go forward without contacting your employer.

Mr. Michael Prue: Or they say if you have a disability—have they defined—is this under the Ontarians with Disabilities Act? Because that's pretty broad; that's probably 10% or 15% of all Ontarians right there. Is that what they've said, or does your disability have to be profound?

Ms. Sonia Singh: Again, we haven't seen how these exemptions would be put into practice.

Mr. Michael Prue: And then they said, "Workers who are afraid to contact the employer"—does the worker simply have to say, "I'm afraid to contact the employer" and then they're exempt? Have they said that?

Ms. Sonia Singh: Again, we're not clear. We think that it's definitely positive that the ministry recognizes that workers would be afraid to contact employers and that that would be a substantial barrier. So we're not clear why this is being made mandatory at all. Definitely, why not suggest to employees that if they like, they could contact an employer? Why not provide tools, as the ministry has some already available on the website? But to make it mandatory is simply a step in the wrong direction. It's not going to compel employers to follow the law; it's just putting more barriers for workers.

Mr. Michael Prue: Obviously the government, in my view, is trying to save some money; this is all about saving money. It's two-pronged. First of all, 42% of the people in British Columbia didn't do it. So that's going to help them in terms of saving money. Second of all, they're not going to have to hire the employment standards officers that they know and I know and everybody in the Legislature knows are really needed.

What is your view? Is your view that we should simply do what is necessary and hire the employment standards officers and empower workers to get their money back?

Ms. Sonia Singh: I think we need to see a variety of strategies. One certainly is increased resources for the Ministry of Labour; that's very important. But we also need to see a higher cost to employers for breaking the law. Right now, the penalty is very minimal, if there is a penalty at all, and Bill 68 takes us in the other direction. It says that employers could settle for less, so what kind of message is that sending employers? That you can break the law, get off scot-free and in fact pay less than what you should have had to in the first place.

That's certainly a step. And support to workers is absolutely essential, support in filing claims and interpreting how the law applies to their situation.

Mr. Michael Prue: This bill's title is Ontario is open for business. It doesn't say that it's open for workers. It doesn't say that it's there to protect people. It's there, open for business, to make it easier for business—I guess some bad businesses—to rip people off. Am I wrong in that assessment?

1330

Ms. Sonia Singh: I think, certainly, there are employers out there that look for opportunities, when they see that there's a less than 1% chance of facing an inspection in the province of Ontario—I'm sure that many of us, if we saw that the odds of being caught are that low, might think twice about whether we were going to follow the law. I'm sure all of us are law-abiding in this room, but certainly those are very low odds of getting caught. We are surprised to see these kinds of changes to employment standards in such a big, omnibus bill in the middle of the summer when it's very hard to have a broad public consultation. That's why we're recommending that schedule 9 be taken out of Bill 68. Let's continue having this discussion and this debate in a broader sense.

The Chair (Mr. Pat Hoy): Thank you, and thank you for your presentation.

Ms. Sonia Singh: Thank you very much, members of the standing committee.

CANADIAN MANUFACTURERS AND EXPORTERS

The Chair (Mr. Pat Hoy): Now I call on the Canadian Manufacturers and Exporters to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning. If you'd just identify yourselves before you begin.

Mr. Ian Howcroft: Good afternoon, everyone. My name is Ian Howcroft and I'm vice-president of the Canadian Manufacturers and Exporters, Ontario division. With me is Paul Clipsham, our director of policy and business intelligence.

On behalf of the CME, I'd like to thank the committee for the opportunity to present today on Bill 68, the Open for Business Act. In our view, this is a very important piece of legislation that will improve the environment for investment in Ontario, and we strongly support this act and the direction and intended objectives.

Before we comment specifically on Bill 68, I wanted to provide a little bit of comment or context on the importance of manufacturing and why we think this type of direction is so much needed. We're emerging from a deep and protracted recession. The manufacturing and exporting sector bore the brunt and the damage from the meltdown in the credit markets around the world and the subsequent slowdown in the economy of our largest trading partner, the United States.

The impact of the recession can be seen in a few statistics. Between August 2008 and August 2009, we saw exports fall by approximately 32%, manufacturing sales across the country fell by 20% and production fell by 25%. There were 200,000 manufacturing jobs lost in the country during that time—over half a million since 2004; 62% of manufacturers across Canada laid off workers, not counting closures; and 21% of manufacturers across Canada cut their workforce by more than one third. These were very serious measures to deal with very serious economic challenges.

Notwithstanding those facts, manufacturing still matters to Ontario and we appreciate the government's support and initiatives to help manufacturing regrow and retain the importance it does play in the economy—still the largest single sector in the economy, employing 800,000 directly, and almost 1.5 million indirectly are dependent on manufacturing. It provides 70% of the R&D in the business sector; 85% of all new technologies are commercialized in Canada by manufacturers; 30% of all business taxes come from manufacturing; and for every dollar invested in manufacturing, it generates over $3.25 in total economic activity.

I'd also like to point out that the importance of environmental issues is a key for manufacturers, as it is for all of us. During the years 1990 to 2007, we saw manufacturing production in Canada rise by 75% while greenhouse gas emissions in manufacturing fell by 10%. So I just wanted to make sure that we understand the importance of manufacturing and why we're supportive of the Open for Business Act, which will help us deal with some of the ongoing challenges that we have.

Manufacturers have, on a more optimistic note, been at the forefront of the recent recovery. In Ontario, manufacturing has been up 22% over the last year, which is very positive news, but, again, it's all relative, given how far we've fallen.

While the recovery is certainly evident, there are a number of obstacles to a full recovery, including the volatility and rapid appreciation of the Canadian dollar, overcapacity in many industrial markets, the availability of financing restrictions in export markets and the mounting costs of regulatory compliance.

CME is encouraging all government levels to review and modernize their legislation, the regulations and the processes that are required; eliminate any unnecessary issues; harmonize rules and procedures as much as possible; and improve the management of government to encourage a more efficient and effective regulatory burden. We are encouraged by this initiative and we think it goes a long way to help reduce the process cost and the regulatory cost, which will allow businesses to focus on what they can do to help the economy continue to grow and hopefully to thrive.

To talk about some of the substantive issues in the bill, I'll turn to Paul Clipsham, our director of policy and business intelligence.

Mr. Paul Clipsham: Thanks, Ian.

As Ian mentioned, CME is generally very supportive of the government's Open for Business initiative and the contents of Bill 68. In particular, CME strongly supports the move to a risk-based approach to certificates of approval. In the past, businesses have had to wait an unacceptably long time for C of A's on items that are commonly approved and should have been deemed low-risk. The move to a risk-based approach will ensure that low-risk projects are approved quickly to ensure that business opportunities are not lost, while focusing Ministry of the Environment resources on higher-risk, more complex applications. We anticipate this will result in improvements to both the natural and the business environment.

CME also supports the removal of unnecessary citizenship requirements for professional engineers. Manufacturers are increasingly sourcing engineers from an international pool of talent. These requirements had in the past proved cumbersome for employers and functioned as a constraint on business activities.

Changes to the powers assigned to employment standards officers, we believe, will result in reduced administrative time and resources for government and will improve the dialogue between employers and employees to resolve complaints early, before they escalate. However, we would also like to highlight a concern about the potential that expansion of the powers of an employment standards officer could result in unintended consequences if, for example, those powers were applied inconsistently or excessively. The Ministry of Labour must ensure that inspectors are properly trained to deal with complaints. We will continue to assess the impact of this change on our membership and will provide further input to the members of this committee as necessary.

While CME is generally supportive, we have a concern with one aspect in particular that does not reflect the Open for Business moniker. The Open for Business Act makes changes to the application of administrative penalties under the Environmental Enforcement Statute Law Amendment Act that are of concern to many manufacturers.

The proposed wording of Bill 68 would enable penalties to be applied by either a provincial officer or a director. It should only be a director level, as defined in the MOE organizational hierarchy. This is at a more restrictive, more senior level to ensure broader oversight. It is also critical that businesses have the ability to appeal, to ensure that the principles of natural justice are recognized and upheld.

In conclusion, we certainly appreciate the opportunity to provide comments and demonstrate business support for this legislative package. Thank you, and I'm happy to take any questions at this point.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the government. Mr. Sousa.

Mr. Charles Sousa: Thank you very much for your presentation. We appreciate you being here during these consultations. It's important to recognize that we are in consultations and we're listening to all stakeholders rela-

tive to the issues being brought forward. So we're listening.

I note in your submission three items particularly, one being C of A's and the Ministry of the Environment's application to low-risk in order to expedite those matters that are of a lesser impact. Presumably you're in agreement, based upon your submission.

You talked in your written submissions about the unnecessary citizenship requirements for engineers and that you're in concurrence with that, and of course we've had some discussions already today in regards to the Ministry of Labour.

In discussion with regards to the Ministry of Labour, have you been having contact and discussions with the ministry around the issues that are being brought forward?

Mr. Ian Howcroft: We have had many discussions with the Ministry of Labour with regard to improving the employment standards situation, the backlog that they are experiencing, and finding ways to deal with that. I think the ministry recognizes that it's better to avoid complaints in the first instance, so if you can solve those issues before they become an employment standards complaint, you can focus the employment standards officers and the resources necessary on those that are really problematic. The vast majority of employers and workers in Ontario are honest, law-abiding citizens who want to do the right thing, so making them aware of what those obligations are will help to clarify issues.

Most employers want to make sure they're doing the right thing. They are not trying to take advantage of workers; they're not trying to do anything that's in violation of the law. We think the government should continue to focus on those few bad employers and those few bad workers that need to be addressed specifically, but don't try to paint all employers as bad, trying to take advantage of vulnerable workers, because most employers and most of our members are very small enterprises themselves. They don't have a lot of resources. They have the same challenges that were mentioned earlier today around not having access to lawyers, etc. So I think we have to look at how best the government can help that, and solving complaints before they become official, formal complaints will go a long way to allowing the government to focus on the real problem.

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Mr. Charles Sousa: The government's concern, and that of the committee, is to ensure that employees' rights are protected and that they do have an avenue by which to take action when they feel it's necessary. A number of exemptions, as was already highlighted by my colleague, exists in terms of those most vulnerable—those with language difficulties, those who feel intimidated in dealing with the employer. But there's also an option for them to choose not to deal with the employer. What is your reaction to that? They have the option, for whatever other reasons they may have, at their disposal not to go directly to the employer first. In some cases, that may not take place.

Mr. Ian Howcroft: I'm not sure if I understand your question.

Mr. Charles Sousa: They have an option to say, "We'd rather not talk to the employer." We recognize, I think, based on the expedition of these issues, that we want to get them resolved earlier than later. As it stands now, some of the stuff does take a long time to get resolved. Having them deal with the employer initially may help resolve/mediate the issues, but they have the option not to do so.

Mr. Ian Howcroft: Well, I think if you can resolve an issue as early as possible, it goes a long way to solving it before it becomes a bigger problem and a bigger challenge. I had the benefit, perhaps, of starting my career as an employment standards officer, so I know exactly the challenges that were being dealt with. You can see where problems escalate.

If you can solve it through communication, raising it with the employer—a lot of times it's because they weren't aware of the whole situation—talking with your employer and the employees can go a long way to solving a lot of those problems. I think that's probably the best way to start in the vast majority of cases.

For the few cases where there are problems and challenges, I think you're right: You would have the recourse to go that way. But I think the vast majority of complaints can probably be dealt with a lot more expeditiously by making sure the employer and employee are aware of what the situation, what the challenge and, most importantly, what the solution may be in that case.

Mr. Charles Sousa: Very good. Thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

ONTARIO FEDERATION OF AGRICULTURE

The Chair (Mr. Pat Hoy): Now I call on the Ontario Federation of Agriculture to come forward, please. Good afternoon. You have 10 minutes for your presentation, and there could be up to five minutes of questioning. I would just ask you to identify yourselves for our recording Hansard, and you can begin.

Mr. Mark Wales: Thank you. My name is Mark Wales, and I'm the vice-president of the Ontario Federation of Agriculture.

Mr. Peter Sykanda: My name is Peter Sykanda. I'm a policy researcher with the Ontario Federation of Agriculture.

Mr. Mark Wales: Mr. Chairman, committee members, the Ontario Federation of Agriculture welcomes this opportunity to present our perspective on the Open For Business Act, 2010.

We caution government to carefully consider all the implications on individuals and businesses when considering which statutes and regulations merit being repealed or revoked. The voices of all sectors impacted by statutes and regulations must be carefully considered before action is taken.

A brief summary of our recommendations:

In regards to the Drainage Act, the Ontario Federation of Agriculture supports all of the proposed amendments to the Drainage Act, schedule 1, namely streamlined processes; repeal of requisition drain provisions; and repeal of section 83, polluting a drain. Repealing section 83 will not jeopardize the environment. Statutes such as the Environmental Protection Act and the Ontario Water Resources Act carry much stiffer penalties. We're not aware that, historically, section 83 has ever been used, and it carries a very small maximum penalty.

The Livestock, Poultry and Honey Bee Protection Act: The Ontario Federation of Agriculture supports the proposed changes to compensation for livestock, poultry and honeybees killed or injured by predators. We believe the proposed order-in-council programming addressing wildlife damage to livestock, poultry and honeybees will better serve producers if all of the following principles are included: that the list of predators be expanded beyond current wolves, coyotes and bears; that the list of eligible livestock and poultry be expanded beyond cattle, horses, sheep, goats, swine and poultry; that livestock guard animals—dogs, donkeys, llamas—be treated as livestock; that compensation reflect true market values; that the provincial government reimburse municipalities for their costs in running this program; that the appeal process from the Livestock, Poultry and Honey Bee Protection Act be retained; and that the Ontario Ministry of Agriculture, Food and Rural Affairs' policy on setting a value for newborn calves, lambs and kid goats be retained.

The Oil, Gas and Salt Resources Act: The warrantless search provisions proposed for the Oil, Gas and Salt Resources Act are an affront in a free and democratic society. Likewise, the incidental pass-through provisions proposed for the Oil, Gas and Salt Resources Act are entirely unwarranted and unnecessary. Every farm in Ontario where oil or gas is produced or gas is stored has road access. Access through a neighbouring farm is unnecessary. Neither provision recognizes on-farm biosecurity or the natural hazards such as livestock, livestock guard dogs, ponds, manure lagoons etc. on farms.

As an anecdote, there's a pasture that I drive by frequently in eastern Ontario and there's a sign posted that says, "No trespassing unless you can cross my pasture in 29 seconds, because my bull can do it in 30."

Part of what I do at the federation is I'm on the technical advisory committee with the Ministry of Labour and the Occupational Health and Safety Act, and every year we help train their inspectors on biosecurity issues. They're one of the few ministries that are at least going through that type of training program and understand biosecurity. It's very necessary. It's not just biosecurity about animals on farms; it's also in terms of crops. It's very easy to walk through a crop that may have some sort of bacterial disease, carry it on your clothes and carry it into a neighbour's crops, so the fundamental question is, who will be responsible?

The Ontario Federation of Agriculture believes that both provisions should be dropped.

Further recommendations as well: The federation of agriculture recommends that the warrantless search and incidental pass-through provisions in other provincial statutes be similarly dropped for the same reasons.

Thank you. I'll take any questions.

The Chair (Mr. Pat Hoy): Thank you for your presentation. The questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation today. I just want to begin by asking a bit about the predation changes that are in the bill and what you're looking for as well. In my own riding, which is Parry Sound–Muskoka, I attended an OFA meeting in the northern part of the riding a few months back and I was quite surprised that the number one issue that came up was predation. Maybe it's because we have more wild animals around a northern riding, but that was a bit of a surprise for me.

Now, in this bill, I gather there are changes to the section where a wolf is being taken out of the description of "predator." I just wonder if you were concerned about that change, because that seems to be lessening—obviously, wolves will still kill animals. I wonder if you're concerned about that.

Mr. Mark Wales: That's why I mentioned that we would like to see the principle that the list of predators be expanded beyond what it currently is. There are wolves, coyotes, bears. We also have a lot of wildlife that has been introduced by the various ministries. Elk is a huge problem in eastern Ontario. Wild turkeys as well have been reintroduced. I know when I've seen them in the wintertime, they'll be up around the birdfeeders in the village. It's nothing to see 40 turkeys in there. There's a greater challenge as well with wild turkeys getting into livestock feed and passing disease and so on.

As long as that list is expanded beyond what it currently is, that's our biggest concern.

Mr. Norm Miller: So I assume you're opposed to dropping "wolf" as being a predator? That's what I understand Bill 68 does.

Mr. Mark Wales: As I said, we want to make sure that the list of predators is expanded and would include wolves as well, but not restrict it to that.

Mr. Norm Miller: Okay. Thank you very much.

Mrs. Julia Munro: Thank you very much for coming. I was also very interested in the question of the predator and the limitations set by putting in a list, because we have turkey vultures in the area where I live.

Mr. Mark Wales: We have them everywhere.

Mrs. Julia Munro: I think it is a danger to restrict it. It should be a "such as but not exclusive to" kind of thing. Obviously, the question of predators is a key one for people and it does take different forms.

The question of entering private property without a warrant: I just wondered whether or not, in the conversations that you had with the ministry, there had

been any indication of a willingness to understand the importance of warrantless entry in and around farms.

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Mr. Mark Wales: In some ministries, actually, the conversation goes very well. I sit on the Lake Erie region source water protection committee, and the Clean Water Act, which is under the Ministry of the Environment—really, we go a long ways to make sure that any time there has to be a property visit, the landowners are contacted ahead of time. I mean, it's enshrined in how all the committees work and the process going forward. But, no, we're not having any luck with that discussion with the ministry of—would it be the Ministry of Energy?

Mr. Peter Sykanda: That was for—

Mr. Mark Wales: Oil and gas.

Mr. Peter Sykanda: Yes.

Mr. Mark Wales: Unfortunately, we're not getting any positive response there at all, so that's why we want to make sure that those provisions are dropped.

In the rural community, everyone has a driveway. If they're going to look for an abandoned oil or gas well, that well has probably been abandoned for a very long time, so the urgency of having to cross someone else's property and run all of the risks of biosecurity and danger to the officers—it's much simpler to simply go into the driveway, seek permission and do it properly. That's what should be done in our society.

Mrs. Julia Munro: Well, I know that in other circles, the question of warrantless entry is one that causes a great deal of concern, and particularly in this one as well, for some very practical, obvious reasons. I think it's really important that you've brought it to our attention.

Mr. Mark Wales: Thank you, and hence our recommendation that it be taken out of other pieces of legislation. While we're simplifying legislation, let's get a bad clause out of other pieces as well.

Mrs. Julia Munro: Okay. Thank you very much.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair (Mr. Pat Hoy): Now I call on the Canadian Environmental Law Association to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning. If you would simply state your name for our recording Hansard, you can begin.

Ms. Ramani Nadarajah: Good afternoon, Mr. Chairman and members of the committee. My name is Ramani Nadarajah. I'm a lawyer with the Canadian Environmental Law Association. CELA welcomes the opportunity to make submissions to the standing committee on Bill 68, the Open for Business Act. My comments are confined to schedule 7, which deals with environmental approvals.

CELA, in conjunction with the Canadian Institute for Environmental Law and Policy and Ecojustice, has already provided very detailed comments on the government's proposal to modernize environmental approvals. Unfortunately, our concerns were not addressed in Bill 68, so the comments we made earlier stand.

I understand that counsel with Ecojustice has already provided this committee with a copy of our brief and has addressed some of the concerns we raised in relation to Bill 68. We support their submissions.

Given the time constraints, I will be dealing with another issue in relation to Bill 68 which is a matter of great concern to CELA. This is the loss of fundamental legal rights which are provided under Ontario's Environmental Bill of Rights.

The Environmental Bill of Rights, which became law 16 years ago, greatly enhanced public participation in the environmental decision-making process. This included the requirement for the government to provide public notice and a comment period for instruments such as certificates of approval. In addition, the public was also given the right to appeal these instruments if they could establish that the decision was unreasonable and that there was a potential for significant environmental harm. This allowed the public to have the ministry's decision to issue an instrument reviewed by an independent tribunal, the Environmental Review Tribunal, prior to the operation of a facility.

The changes proposed by Bill 68 would eliminate these basic legal rights in relation to certain types of approvals. As you are aware, under Bill 68, the government is proposing a two-tiered environmental approval system in Ontario. This includes a registry process and a certificate-of-approval process.

Under the registry process, certain activities would be registered with the ministry, provided they meet specified eligibility requirements. A facility which was subject to this process would be required to operate in accordance with rules established under regulations. Individual registrations, however, would not be posted on the Environmental Bill of Rights registry and would not be subject to appeal by third parties. The changes proposed by Bill 68 mean that the public would no longer be able to provide comments in relation to activities that are subject to the registration process.

It is CELA's position that there needs to be an opportunity for public input on the suitability of an activity for registration prior to its operation in Ontario. Otherwise, the only way the ministry would find out about a serious environmental problem would be after adverse impacts had already occurred.

In addition, the changes proposed by Bill 68 mean that third parties would no longer be able to appeal activities subject to the registration process, even if they're able to meet the very stringent leave test under the Environmental Bill of Rights.

CELA has represented numerous clients in relation to leave applications. In a number of cases where leave was granted, the instrument was ultimately either amended or revoked. The leave-to-appeal provisions thus have been

instrumental in ensuring environmental protection in Ontario.

An evaluation that was done on the Environmental Bill of Rights almost a decade after it came into force concluded it had not had any measurable impact on delaying approvals. Consequently, there is no compelling rationale that would justify exempting the registration process from the Environmental Bill of Rights. I would add that when the government announced its intention to modernize environmental approvals, it stated that one of its objectives was public transparency. Bill 68 is fundamentally at odds with this objective. Consequently, we urge the government to amend the bill to ensure that public participation rights provided under the Environmental Bill of Rights apply to all activities subject to the registration process.

Thank you for giving me the opportunity to provide these comments. I would welcome any questions.

The Chair (Mr. Pat Hoy): Thank you. The questioning goes to the NDP and Mr. Prue.

Mr. Michael Prue: Thank you. The last point you made is one that intrigues me, that there really is no delay by the current legislation; there's no delay to development proposals and the like from environmental proposals that might impact. Has the government indicated to you why they're making this change? I mean, the bill itself is "Ontario is open for business." It would seem to me that this is being done to spur some businesses to come into Ontario, where you don't have to go through processes; you can get up and running really fast. Have they explained to you why they're doing this, in view of the fact that it hasn't really caused any delay?

Ms. Ramani Nadarajah: No, the government really has not provided any kind of explanation with relation to this. As I mentioned earlier, we provided a joint brief to the government on this issue before Bill 68 even came out. The very first issue we raised with the government was that there was no evidence provided that there in fact was a significant delay with the approvals regime, and if there was, we wanted them to provide information in relation to that. That information has not been forthcoming from the ministry, despite the brief and despite correspondence with senior staff on that issue.

Mr. Michael Prue: Over the years, I have heard many developers and business interests talk about the onerous task of meeting environmental standards and how long it takes, but I've never seen any evidence. Did the government indicate that they didn't have the evidence? Did they indicate that they're simply listening to other people? I'm perplexed.

Ms. Ramani Nadarajah: The government has not provided a compelling rationale for this proposal. We have asked for them to provide any information they can in relation to the delay. I think our position to the government was that before you address the problem, you have to understand with a degree of precision exactly what the nature of the problem is. That information was never forthcoming, and it still is not to this day.

Mr. Michael Prue: You also talked about the loss of the public's right to appeal. Could you expand? I mean, are they simply taking away the right with this bill, or is it just made more onerous and more difficult to actually have your say if you are not happy with what's going on?

Ms. Ramani Nadarajah: They're actually taking away the right. The bill doesn't explicitly say that the registration process is exempt from the EBR, but the way it would work is, currently, in order to have the benefit of the notice and comment provisions under the EBR and the third party leave-to-appeal rights, they apply in relation to what are known as instruments. Those are basically things like permits or certificates of approval issued by the Ministry of the Environment. What Bill 68 is proposing to do, as you know, is that with respect to certain types of activities, they would simply be required to be registered on a registry, and they would have to comply with the rules set out by regulations. By virtue of the fact that they will be complying with the regulation and the ministry director will no longer be issuing an instrument, the EBR would not apply.

It's a change that may not be apparent, but it's very clear that this is what is going to happen. The ministry, in their white paper, when they were looking at modernizing environmental approvals, very categorically stated that the Environmental Bill of Rights, in relation to notice and comment provisions as well as third party leave provisions, would not apply in relation to registrations. That reflected instantly in our reading of the bill.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Ms. Ramani Nadarajah: Thank you.

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COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

The Chair (Mr. Pat Hoy): Now, I'd ask the Council of Ontario Construction Associations to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning. I would just ask you to identify yourselves for the purposes of our recording Hansard.

Mr. David Zurawel: My name is David Zurawel. I'm the vice-president of policy and government relations.

Mr. Ron Johnson: And my name is Ron Johnson. I'm the deputy director of the Interior Systems Contractors Association.

The Chair (Mr. Pat Hoy): Go ahead.

Mr. David Zurawel: Mr. Chair and members of the committee, thank you for the opportunity to appear before you this afternoon to speak to Bill 68, Ontario's Open for Business Act, 2010. As I have said, my name is David Zurawel. I am the vice-president of policy and government relations for the Council of Ontario Construction Associations, or COCA.

COCA is the provincial organization responsible for advocating the interests of institutional, commercial, industrial and heavy civil construction industry

employers to Queen's Park. Our 32 member associations represent approximately 10,000 employer companies across Ontario, employing more than 400,000 tradespeople. Construction roughly constitutes just over 5% of provincial GDP, valued at $30.5 billion.

Joining me this afternoon is Mr. Ron Johnson, the deputy executive director of the Interior Systems Contractors Association of Ontario, one of COCA's most active members. Mr. Johnson is also the former provincial member for the current riding of Brant.

Bill 68, Ontario's Open for Business Act, represents the culmination of more than 100 legislative proposals from 10 different government ministries. Of particular significance to the province's construction industry are those amendments tabled by the Ministry of the Attorney General that would make changes to the Construction Lien Act. It is because of these changes that COCA supports Minister Pupatello's bill.

If passed, this bill's re-enacting of the definition of "improvement"; addition of a new section 33.1, providing for owners of land intended to be registered in accordance with the Condominium Act to publish notice of the intention to register in a construction trade newspaper; and amendment to remove the requirement to verify a claim for lien by affidavit will represent the first significant changes to the Construction Lien Act governing our industry in 20 years.

These proposed amendments represent close to three years of concerted and diligent advocacy and lobbying efforts on behalf of the ICI and the heavy civil construction industry. The change to the definition of what constitutes improvement work is especially significant. This proposed amendment would restore fundamental rights for a great many contractors to get paid monies owed to them for work already completed.

Despite the merits of this proposed amendment, it will, however, only serve a narrow selection of tradespeople within the construction industry and frankly would only address the symptom of the greater problem confronting Ontario's construction industry. Many contractors are not paid in full for their work, and as a result, are subjected to undue and unjust economic hardship. COCA is hopeful that the government remains open to amending this legislation to include provisions that would further change the Construction Lien Act to include (1) the timely release of holdback monies to contractors, and (2) the assurance of the preservation of their lien rights until such monies are paid.

Ontario's construction industry is the only sector of the economy subject to a holding back of funds to those contracted to complete specified work. These funds, amounting to 10% of the value of the labour, materials and services of a project, are retained by a project owner or contractor. This holding back creates a fund available to be used to satisfy the claims against this project. These funds are required to be retained by law until such time as the project is deemed complete or a contractor's lien rights have expired.

COCA and its members take no issue with the principle of holdback funds. These monies are necessary to provide the security to protect project owners that contracted project work is completed on time and according to agreement.

What is at issue are the terms of the release of these monies as they presently exist within the Construction Lien Act. While the law demands that 10% of the value of all construction projects be held back to ensure proper and timely completion of said projects, the legislation does not equally compel the release of these funds. Our industry views this as a fundamental imbalance that must be and can easily be corrected. COCA is today asking this committee to recommend to the government that it amend the Construction Lien Act further to include a provision that will change the act from stating that upon completion of project work, holdback monies "may" be released to "shall" be released.

This fine distinction in language is currently keeping hundreds of millions of dollars in holdback monies every year from the honest and hard-working people who earn them, all because money that is compelled to be surrendered as security for the completion of a project is not equally compelled to be released to its rightful owner once the work is done.

The Construction Lien Act's inadequacy further compounds this problem because contractors are losing their legislated rights to lien for unpaid monies for completed work, leaving them with no recourse but to sue for their money or all too often having to walk away without their money entirely. Because the Construction Lien Act does not compel the timely release of holdback funds to contractors, their protective rights to lien their projects for payment are often long expired before they are aware that the final payment is even an issue of concern.

Contractors in Ontario have only 45 days from the last supply of labour on a project in which to file a lien for outstanding monies owed. It is not unusual for payments for construction projects to be made at 90, 120 or even 150 days. If under any of these situations there is a problem with payment, a contractor's lien rights for outstanding monies have already long expired. It is common practice on long projects for final payment of service provided to not be made until the end of the project. For a contractor providing early services such as excavation, this can stretch into years.

The fundamental argument we make on behalf of our industry is that if someone has done the work, then why does someone else have their money? The Construction Lien Act in its current form answers this question. The money is not paid because there is no statutory compulsion to do so once the work is done, and once such a problem comes to light, the contractor's rights to lien for their money are already gone.

COCA and the construction industry propose that this problem can be easily and equitably resolved by ensuring that all contractor lien rights are in place until the project owner signs off on the architect's certificate of substantial performance, declaring the job to be 97% complete.

At that time, all contractors on the project can have the 45-day countdown started on their lien rights. By simplifying the system with such a solution, everyone involved will know exactly where they stand with each other and with their rights.

With the economy emerging from its most difficult time in 70 years and when future uncertainty appears set to remain for quite some time, it only makes sense that people should be paid in full and on time for the work they complete. Bill 68 offers a prime opportunity for the government to streamline legislation regulating the construction industry so as to ensure that all parties have a level playing field from which to conduct their business. While the proposed changes to the Construction Lien Act contained within the bill are a very important first step to reforming our industry, there is much more work to do to ensure the timely release of holdback monies and to protect contractor lien rights to ensure such payment.

Thank you very much for your time and attention. We are available to take any questions that you may have.

The Chair (Mr. Pat Hoy): Very good. We'll go to the government. Mr. Sousa.

Mr. Charles Sousa: Thank you very much for your presentation. I'm very pleased that through your consultations we proposed some of the amendments to the Construction Lien Act, in response to the proposals that were brought forward by COCA and the Ontario Bar Association. Those amendments, if passed, would be the first substantive amendments, as you stated, to the legislation in 20 years. I know that in your press release prior you were speaking at some length about some of the collaborative efforts and how necessary it is to move forward on these issues. We do look forward to continuing to work with the construction industry to consider further improvements to legislation.

I have two questions. One is, what impact will the amendment to the definition of "improvement" have on your members? And the other one would be, could you elaborate then on how these amendments would be good for business in Ontario?

Mr. Ron Johnson: Thank you for the question. The definition of "improvement" is an important amendment and we're not going to minimize the value of that amendment that you guys have put into this bill. It's significant to a number of contractors who work primarily in the electrical or mechanical sectors. It does, however, in terms of the overall package of amendments that you've proposed, fall short on a number of fronts. You have, as a government, failed to address the holdback issue, which is of great concern to the broader construction sector.

The definition of "improvement," although valuable, affects a small percentage of those who actually have to utilize the Construction Lien Act. A lot of contractors and various other trades within construction don't really require or need the definition of "improvement" to be changed. It only affects a couple of trades.

More importantly, I think—not to be overly critical of the steps that have been taken, because they are positive—we do require, as an industry, greater support from the government, greater leadership shown by the government, with respect to amending the Construction Lien Act. It doesn't adequately address the core issues that are concerning the construction industry.

COCA has put together a very broad band of support from right across the province and right across the construction sectors, involving both union and non-union labour organizations, and union and non-union contractor members. Unfortunately, so far, the amendments for the most part have fallen on deaf ears. We're looking to get a little more from you guys with respect to the act, but the definition of "improvement" was valued.

Mr. Charles Sousa: I appreciate that. I know we've clarified some of the issues around condominiums, as you mentioned earlier, and closed some of those loopholes with some of the subtrades, and clarified the right to cross-examine those who have registered liens and so forth.

I appreciate your submission very much and we look forward to reviewing what you've put forward.

Mr. Ron Johnson: Thanks.

The Chair (Mr. Pat Hoy): Thank you for your submission.

Is Analogy Global Communications here? No. We're going to recess until one of our presenters, who should be here by 2:30, if not sooner—we'll recess until they arrive.

The committee recessed from 1414 to 1416.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. Pat Hoy): Committee will resume again, and we have the Ontario Forest Industries Association before us. You have 10 minutes for your presentation. There could be up to five minutes of questioning. Just identify yourself for our Hansard and then you can begin.

Mr. Scott Jackson: Absolutely. Good afternoon and thank you, Mr. Chair. My name is Scott Jackson and I'm the manager of forest policy for the Ontario Forest Industries Association.

On a personal note, I have degrees in environmental biology from Queen's University and a master's of forest conservation from the University of Toronto.

This past year, the OFIA and the Canadian Lumbermen's Association, a provider of internationally recognized, world-class grading and inspection services, joined forces under the umbrella of a single organization with a combined history of over 160 years. Our association represents over 70 members and includes manufacturing companies ranging from large multinational corporations to small family-owned businesses. Our members produce a broad range of products, including biomass, pulp, paper, paperboard, lumber, panelboard, plywood and veneer, and they are members of the wholesale and

export sector, forest management companies, lumber operators and more.

I would like to express my thanks for the opportunity to present the thoughts and concerns of the OFIA today. As you all know, the forest sector continues to be faced with one of the most challenging economic times in recent memory. According to the Ontario government's own statistics, our sector has lost approximately 15,000 jobs and experienced 62 mill closures since 2003. However, despite these challenges, there are reasons to be optimistic. With the right public policy and continued government support in key areas, Ontario has the potential to attract new forestry investment, create employment opportunities and generate prosperity for all Ontarians.

As an example, with the mountain pine beetle epidemic out west, Ontario is being viewed as the main fibre basket for Canada. In addition, Ontario represents 42% of Canada's non-residential market. Within current building codes, we have an opportunity to increase primary and value-added wood product sales in Ontario by four times the current levels. This represents an additional $1.2-billion opportunity right here in our own backyard. In the United States, the non-residential market represents an additional $12-billion opportunity.

The opportunity and the potential for the forest sector is there. That is why the government needs to ensure that it is doing everything it can to restore Ontario's competitiveness. Competitive environments maintain and attract investment, including within the forest sector. That is why it is imperative for the government to get Bill 68 right.

On that note, I would like to commend the government with regard to the proposed modifications to the environmental approvals system. This is an issue that the forest sector has been raising with the government for several years.

On the whole, however, Bill 68 raises more concern than comfort, and while the provisions for expedited approvals are positive, they are far outweighed by the concerns surrounding the proposed changes to the Crown Forest Sustainability Act under schedule 10. Quite clearly, the proposed forestry changes in Bill 68 do nothing more than simplify the government's process for handing out unwarranted and unnecessary permits under the Endangered Species Act. Regardless of how Bill 68 simplifies the process, the problem remains—permits under the Endangered Species Act do not work.

The ESA is a broken piece of legislation, and one of its fundamental flaws is the permitting process. During consultation in 2006, we explained to government that the permitting system does not work. All it will do is expose industry and government to frivolous legal challenges by anti-everything special interest campaigners and force both government and industry into lengthy and costly legal battles.

Please don't take my word for it. In the packages we've passed around, you'll find a slide from a presentation that the government gave to the forest sector earlier this year. The presentation outlines lessons learned from the implementation of the Endangered Species Act so far, with a specific focus on the problems and concerns associated with permits under the ESA.

Please note bullet one, which states: "You can consult as many experts as you want, someone will always disagree with the findings." Also, please note the third bullet, which states: "Organizations and/or private citizens may use the Endangered Species Act as a springboard to stop projects they disagree with (whether or not they have concerns about impacts to species at risk)."

It is alarming that the government would propose to simplify a process that, by their own admission, is broken and that will have very real and negative impacts on the forest sector. It is even more amazing that the government would propose to do this under the heading of "Open for Business." This is an oxymoron.

During the development of the province's controversial Endangered Species Act, the OFIA presented its concerns, which, while few in number, were very significant. One of these was the permitting process. Another was the need for government to recognize those sectors, including the forest sector, that already provide for species at risk and their habitat. The forest sector has a strong record of not only protecting species at risk but in contributing to their recovery.

In response to these concerns, David Ramsay, Minister of Natural Resources, committed in writing to the OFIA and northern municipalities that the government would provide the forest sector with a regulation under section 55 of the Endangered Species Act that would exempt our sector from the prohibitions of the act, and that this would be provided in recognition of the "efficacy of forest management plans in addressing endangered and threatened species." A copy of this letter is provided in your package.

Just this past March, Minister Ramsay reinforced this commitment on TVO's The Agenda. When asked to comment on whether a written commitment was made to the forest sector and northern communities that the government would recognize that forest management plans would satisfy the requirements of the Endangered Species Act through a long-term regulation and that the reason that government backtracked on this commitment was due to pressures from special interests, the minister responded that he "certainly did not dispute" the statement and that "I made that commitment and we were working towards that commitment, and things changed later on."

The current wording in Bill 68 with regard to the Crown Forest Sustainability Act should be removed and replaced with language that reflects Minister Ramsay's and this government's commitment which explicitly provides the forest sector with an exemption from the ESA. Specifically, Bill 68 should provide for the amendment of the Endangered Species Act to recognize that the primary objectives of the ESA are met through the Crown Forest Sustainability Act and its required forest management

plans. Further, it should recognize the CFSA and its forest management plans as equivalent processes to the Endangered Species Act with respect to planning and providing for species at risk, and as such, exempt the CFSA and forest management plans from the prohibitions of the ESA.

This request is echoed by the Northeastern Ontario Municipal Association, NOMA, in their written submission which is included in your package.

To be clear, this is not a request for an exemption from our responsibilities or our requirements to manage for species at risk. As noted before, we have been doing this for decades. Instead, it is an exemption from an unnecessary and costly process that does little more than expose the forest sector and government to frivolous legal challenges.

If this bill is truly about making Ontario open for business and addressing industry's needs in order to attract investment and create employment opportunities, the government needs to build on the positive changes to the environmental approvals system it has in Bill 68.

Process is a fact of doing business, and Ontario's forest sector prefers the process associated with the Crown Forest Sustainability Act and forest management plans. We do not want the ESA permitting process. We do not want a simplified ESA permitting process as proposed in schedule 10 of Bill 68. There is no such thing.

Thank you.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Yes, thank you for your presentation, Scott. I guess I'll start off with the proposed changes in Bill 68 as they relate to the Crown Forest Sustainability Act and the Endangered Species Act.

Certainly, the backgrounder that I was given states—and I read from it—"The proposed changes will also facilitate more efficient implementation of Endangered Species Act requirements in forest management plans by integrating a consultation process." It sounds like they're trying to make it easier. I read that, from your perspective, as being something that would be positive for the forestry sector, but I'm hearing from you that you don't see it that way. Is that correct?

Mr. Scott Jackson: That's correct: We do not see it that way. The government's proposal certainly does simplify a process, but it is simplifying a government process that will help government. It is also a process that does not work. So it doesn't matter how much you try to simplify it; it is still going to have very real and very strong economic repercussions for our sector.

Mr. Norm Miller: So right now in the forestry sector, the Crown Forest Sustainability Act deals with cases of species that are at risk. You were saying that you've had quite a bit of success with that. Could you talk about that?

Mr. Scott Jackson: Yes, absolutely. I'll give you an example. The bald eagle, for one: It is not considered an endangered species north of the French River; it was until recently considered endangered south of the French River. Part of the reason that the bald eagle had recovered was because of the forest management guidelines that we have had in place since 1987 in this province. No doubt, there were other factors that contributed to its recovery as well, but forestry is recognized as one of the factors that contributed to the recovery.

Forest management is a tool that, if used properly, can be used to create the habitat needed by species at risk.

Mr. Norm Miller: So it was your understanding—the forestry sector's understanding—that the work you had done with the Crown Forest Sustainability Act would be recognized so that it wouldn't be duplicated with the Endangered Species Act. Is that correct?

Mr. Scott Jackson: That's correct. It would be business as usual—and under the Crown Forest Sustainability Act, that is a dynamic process as well. New science is continuously introduced to it. But our understanding, as per the minister's commitment—David Ramsay's—in writing at the time, was that we would receive an exemption under section 55 of the ESA to allow us to continue with business as usual in an efficient and effective manner.

I would also like to note that the government has already given out 200 such exemptions in this province. So what we're asking for is nothing that should be considered new to this government.

Mr. Norm Miller: Otherwise, the system that's proposed is a permitting system, you're saying, and that's going to be harmful for forestry operations.

Mr. Scott Jackson: That's right. The government has made no bones whatsoever that they want us to have to apply for permits now under the Endangered Species Act, and that introduces just an incredible amount of process. What it does is, every time a permit is granted, it will be open for challenge by anti-logging or anti-everything special interest groups that are trying to create fundraising opportunities.

Just to give you a couple of examples, we saw this with the Windsor-Essex bridge. When they went to construct and expand the major land-trade artery between the United States and Canada, it was held up by a group called Ontario Nature under threat that they would legally challenge the permit. As such, you end up with delays, you end up with increased costs and you hold up process that is already looking after the Endangered Species Act.

The government recognizes this themselves. In the slide that I have, "Organizations and/or private citizens may use the" Endangered Species Act "as a springboard to stop projects they disagree with (whether or not they have concerns about impacts to species at risk)."

Mr. Norm Miller: In other words, would you agree if I said that the implementation of the Endangered Species Act from forestry's perspective will make it much more difficult to do business, but will not necessarily protect endangered species any more than they're already protected under the Crown Forest Sustainability Act?

Mr. Scott Jackson: That's absolutely correct. In fact, the approach under the Endangered Species Act is a step backwards. The forest sector operates at the landscape level. We look after all species simultaneously. The way that the Endangered Species Act is structured is you look at it on a species-by-species basis. That is a very outdated means of approaching species at risk within forest management.

Mr. Norm Miller: And when the Endangered Species Act passed, you had the word of the government that the forestry sector would be exempt from the act because of the work done through the Crown Forest Sustainability Act.

Mr. Scott Jackson: That's absolutely correct. That's in the letter that David Ramsay sent to the OFIA and northern municipalities, which is in the package. That commitment was again reinforced on March 22 when Minister Ramsay participated on TVO's The Agenda.

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Mr. Norm Miller: I'll back you up on that one. I was the critic at the time and supported the bill largely because of the government's commitment, which they have since broken.

Mr. Scott Jackson: Yes, absolutely. The government has backtracked on that commitment while simultaneously granting 200 other such exemptions in the province of Ontario. What the government's proposing, in a nutshell, is a slightly gentler kind of death to the forestry sector but a death to the forest sector nonetheless.

Mr. Norm Miller: Thank you very much, Scott.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. Scott Jackson: No more questions? Okay; thank you very much.

ANALOGY GLOBAL COMMUNICATIONS

The Chair (Mr. Pat Hoy): Now I call on Analogy Global Communications to come forward, please.

Good afternoon. You have 10 minutes for your presentation. There could be five minutes of questioning after that. If you'd just identify yourselves for the purposes of our recording Hansard, and then you can begin.

Ms. Kerry A. Thomas: Certainly. I am Kerry Ann Thomas, a co-founder of Analogy Global Communications and acting multimedia specialist. With me is Mr. McConnie E. Providence; he is the senior policy adviser for the company.

I'll just get into a backgrounder of what the company is, just so we can explain why we're here and what we want—

The Chair (Mr. Pat Hoy): You have 10 minutes to speak, so however you wish to use it.

Ms. Kerry A. Thomas: Yes. We've timed everything.

We are a boutique multimedia company that caters in media consulting, project management and publishing. Our main target is the multicultural communities—being a liaison between the government, businesses, media and a gateway for all of that. What we are trying to establish with the Open for Business Act is equal access to opportunities as black businesses. Many times in the past we've found that there have been many obstacles for people who are actual business owners and getting equal opportunities to tenders, procurements and advancements for those opportunities. We are actually here to put forward our company and show how we can help complement the whole Open for Business Act.

For the last few years we've actually been negotiating or speaking with our partners and affiliates in the United States on how we can get them into Canada to help foster and grow the youth initiatives that we have going on in our high-risk neighbourhoods and how we can help in particular sectors for technology, arts and finance. They're very interested in coming to Ontario, and it seems that with the Open for Business Act it has come at a great time, that we've been having discussions to bring them here as well.

Our connections don't stop there with the US. Actually, we've also expanded to the Caribbean where we're trying to foster how we can help create trade between students to the Caribbean and to Ontario as well.

I'm just going to give you a little bit of background on what we've done so far. In 2007, what we did was we held a few various political meetings with the black community to get an idea of some of the issues that they've been facing and how we can help make changes, and that's what our company has been doing and why we're here today and believe that we can help bring benefits to the Open for Business Act through our community.

We've estimated that we can project about $100 million per year to bring to Ontario through some of the initiatives that we've already started with our partners in the US. This can be done through various conventions, summits, trades and meetings. For example, just this past March, led by Councillor Michael Thompson, there were 10,000 engineers who came to Ontario, the largest black group to ever come here. They brought an estimated $30 million to Toronto alone. Imagine if we multiply that by getting at least three times that same number coming to Ontario over a period of five years. You're looking at at least $100 million per year, and in five years, $500 million.

Another approach we want to also bring forward to you is through production and broadcast. We've been working with the idea for a television show that would feature the developments that Ontario, and specifically Toronto, has undergone, which are over 12,000, and we've found a way that we could highlight Toronto, Ontario, to be the star of its own show. That's something that we'd like to explore further with the government, to see how they can be involved with that through the Open for Business Act.

We have been and are seeking opportunities and ways of how we can act as the liaison between, as mentioned, the mainstream media and ethnic media through delivering your message to the intended audience. The main

reason why we feel it would be beneficial is, mainstream Canada has to stay mainstream Canada, even though the face is changing through the many cultures that are coming. By attaching it to a company that is focused particularly in the multicultural communities, we can help reach that audience without losing the fabric of what they were built on.

We also would be able to provide learning materials, through our publishing department, that would cater to these particular communities to help the government effectively deliver their message, which would then help to generate the income that they need through this act.

We have also been working with various farmers through southwest Ontario who have land that is fertile, and they are looking for it to be employed and developed. This is another way which we would like to explore through the Open for Business Act under the agriculture section.

We also are working with various communities to help promote green initiatives, most recently in Jane and Finch. One of the communities there won the Green Toronto Award. These are areas where we are going to continue to work with the community, to help with Ontario's green initiative.

We've provided some statistics for you based on what the demographics are for the black community between Canada and the United States. You'll see that the figures there—there is $88.6 billion generated in businesses for blacks in the United States. We are trying to get some of that money here in Ontario. We are hoping that this can be achieved through some type of affiliation and partnership with the Ontario government through the Open for Business Act.

Mr. McConnie E. Providence: What I have to add would really be footnotes to what Kerry Ann has just said, almost a corollary to an extent. I dealt extensively with the NAFTA treaty a number of years ago in graduate school, and the experience I had during that period was to implement some of the things, the hard facts, to what Kerry Ann has just presented. I'm quite aware of cultural tourism and the role that black businesses play in cultural tourism in Canada, which has been extremely effective in a number of ways. My focus at this particular stage is to see if we can be a messenger or a full partner, so to speak, in the area of cultural tourism, which unfortunately has been grossly overlooked from time to time. But to reiterate what Kerry Ann has said, we can get the message that the government has to offer about the full impact of cultural tourism in Canada from an economic perspective. That has been specifically my role.

I'm also interested in reiterating what Kerry Ann has said in the area of industry. Many important aspects of industry in Ontario have been sidelined because information does not get out as cleanly and as clearly as it should. That's a role that our organization is willing to play as the spokesperson: to delineate, to clarify in many ways what the government has to say about that. We think we can play an effective role.

Specifically in the area of industry, again, and in the area of farming, reiterating what Kerry Ann has said, there are a lot of people who we have contacted in the past, coming from the United States, who have made some very valuable suggestions about what we can do with farmlands. It's amazing what has happened over the past year in our correspondence with these people. This can be fully developed if we are given the opportunity to have a better partnership, as Kerry Ann has stressed, in this area.

From an educational perspective, from a cultural and economic perspective, we think we have a very pivotal role that we can play with government through our program.

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From an analytical, critical and evaluative perspective, we do have the tools at present. We have the skills; we have the experience. We think that there is a role for us to play in this new Open for Business Act.

Thank you.

Ms. Kerry A. Thomas: Again, what we're trying to stress, as Mr. Providence says, is what we are hoping would be considered, through our presence here today. We want to be able to set new standards in terms of how our community is reflected at the decision table. We want to be able to be a voice for our community, a voice that's heard, respected and considered to be effective in helping the government, complementing the government's initiatives, finding ways that we can help generate income as well and changing the perception that we have of our community. There are lots of business owners who are developing and growing, and a lot of them are younger, as we are coming up. We want to be the portal gateway to giving the government that access.

Most recently, we had a mayoral debate in June. One of the most disturbing things I heard from one of the politicians, when we asked, "Why are we never considered for tenders? Why isn't Caribana getting money for a building, since we've been doing this for over 45 years?"—it took him almost five minutes to stop from saying the word "shit" because he knew he couldn't say it. In the end, he said the black community, at the end of the day, is really treated like crap. He wanted to say something else, but he stopped just in time and said "crap."

I respect his honesty. I respect his honesty because it gave me drive to say, "You know what? If he in 2010 can look at us and say this, at this particular time, then we've definitely got to forge forward and let our community know and let everyone else know that we are effective business people." We can produce results. Through this Open for Business Act, we want to be able to forge forward and show how we can do that and change that perception about how we are being treated and not being taken seriously in terms of our business and tenders.

Mr. McConnie E. Providence: From a sociological perspective—I am at the Ontario Institute for Studies in Education in sociology. From time to time, the topic has been brought up among my colleagues as to exactly what

the future of our role is in the decision-making policies if not helping the government to really get their message out.

Kerry Ann and myself and others think that we have created a vehicle which is effective, competent, strong, willing to work with government and also to support—critically, evaluatively, economically—the black community, to help the black community achieve its goals and aims. I think we are ready for that role. We have the tools to do it too.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the NDP. Mr. Prue.

Mr. Michael Prue: First of all, thank you very much for your deputation here today. It seems to me—and correct me if I'm wrong—you are here to say you're open for business and you're hoping to get some. Is that part of what you're here for?

Ms. Kerry A. Thomas: Basically, yes. We are actually here to demonstrate and show, while Ontario is being opened for business, how we can complement the act as well.

Mr. Michael Prue: Okay. Now, the committee is here to discuss potential changes to the legislation that has been tabled in the House. We've had some presenters here talking about employment standards. We've had some here talking about environmental protections; the last presenter talked about how the act is going to impact the forest industry. Do you have any recommendations? Is there anything you want to tell us about what should be changed within the body of the act?

Ms. Kerry A. Thomas: I did go through the body of the act to consider how—and what—changes could reflect where we are coming from with our business. The agriculture component is the only area in which what we're presenting, based on the people we've been discussing—it's the only area that we actually saw that had a bearing, if any, on what we would be doing and the initiatives we'd be putting forward.

We have no suggestions, in terms of changes, to put forward. What we're trying to do, at this particular moment, is use the opportunity to let you know, while you're implementing this Open for Business Act, that we are also here open to work with Open for Business through our community.

Mr. Michael Prue: Thank you very much, then. You've made your point very well.

The Chair (Mr. Pat Hoy): We thank you for your presentation.

LIFE SCIENCES ONTARIO

The Chair (Mr. Pat Hoy): Now I'd ask Life Sciences Ontario to come forward. Good afternoon. You have 10 minutes for your presentation. There could be five minutes of questioning. I'd just ask you to state your name for the recording and then you can begin.

Ms. Janet Lambert: Janet Lambert. Mr. Chair, members of the Standing Committee on Finance and Economic Affairs, thank you. I'm appearing before you today as a representative of Life Sciences Ontario, LSO, the largest and most successful community-based life sciences organization in Canada.

Ontario is a major North American bioscience hub that employs more than 50,000 Ontarians at more than 800 companies and generates more than $11 billion in revenues annually. The sector includes drug manufacturers, firms developing biopharmaceutical products, firms undertaking research or manufacturing on a contract basis, agricultural biotech organizations, clean-tech entities, and firms that offer consulting services to the sector, including lawyers, accountants, engineering firms, IT firms and health consultants. Universities, hospitals and research centres across Ontario also play a pivotal role in the research and development activities of this sector.

By way of general background, biotechnology is the application of science and technology to living organisms. It's comprised of such core technologies as DNA or RNA applications, protein and peptides or enzymes, cell and tissue culture and engineering, gene and RNA vectors, bioinformatics, nanobiotechnology, process biotechnologies and subcellular processes. The applications of biotechnology to the economy are vast, including new vaccines to prevent disease; repair of damaged organs and tissues and improved detection of diseases; treatments for human infertility; genetically modified plants with resistance to pests; bacteria capable of cleaning up oil spills; biodiversity; environmentally friendly biofuels; and fibres made from renewable biotech products.

The members of LSO acknowledge the unprecedented challenge faced by the government in seeking the return of the province to economic health. LSO believes the life science community in Ontario has an important role to play in helping the government to achieve this objective and welcomes the opportunity to work with the government in this process.

LSO believes that the accelerated implementation of commercial applications of biotechnology is essential to become a more innovative economy that produces high-quality jobs and employment opportunities for future generations and that is able to support the important health and social service programs of our province. We're pleased to be able to contribute to the efforts of this committee as you study and report on Bill 68, the Open for Business Act, 2010.

LSO also acknowledges that the Open for Business legislation is part of the government's Open Ontario plan that was announced in the speech from the throne on March 8, 2010. In particular, LSO notes that the government intends the Open Ontario plan to create an Ontario even more open to new ideas, new people and new investment, not only to replace old jobs that have gone but to create the new jobs that are coming.

The enhanced application of biotechnology to the Ontario bioeconomy has the potential to bring forward new ideas that lead to new investment that employs new people. In this regard, LSO acknowledges that in recent

months the government has announced important initiatives in the health and energy sectors. The members of LSO have an important role to play in helping to ensure that these initiatives achieve their stated objectives.

Most recently, the government has announced an undated version of its life sciences commercialization strategy. This is a very important initiative for the members of LSO, and we look forward to working with the government to implement strategy in the months to come.

Bill 68 will update legislation within the mandate of, among other ministries, the Ministries of Agriculture, Food and Rural Affairs, Economic Development and Trade, Environment, Natural Resources, and Northern Development, Mines and Forestry. Each of these ministries has an important role in contributing to an appropriate environment to facilitate the commercialization of biotechnology in Ontario, and we encourage each ministry to continue to work with members of our community to identify ways in which the government can facilitate the introduction and adoption of new applications of biotechnology, with the resulting benefits for Ontario.

The bill is complex and the subject matter diverse. However, the spirit of the bill—supporting economic growth and fostering simpler, better and faster interaction between government and business—is one we wholeheartedly endorse. LSO also endorses creating a more competitive business climate while protecting the environment and public interest.

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Establishing a modern, risk-based and science-based approach to government approvals, enabling faster and more efficient resolutions between business and government, and harmonizing Ontario's business practices with other North American jurisdictions will assist life sciences entities in Ontario to flourish.

LSO has reviewed the proposed statutory amendments in respect of each of the ministries I've mentioned. Our review did not reveal any particular issues with respect to the proposed legislative reforms in so far as biotechnology commercialization is concerned. That being said, LSO would urge the government to listen carefully to comments from stakeholders who are affected directly by the proposed changes.

While we congratulate the government on the important initiatives that it is pursuing to advance the interests of the life sciences sector in Ontario, we would be remiss if we did not highlight some of the critical areas where additional government effort is required and where LSO will be coming forward in the next months with new ideas for the government and the other political parties to consider.

First, notwithstanding the best intentions of the government, including some of the initiatives included in the life sciences commercialization strategy I mentioned earlier, there continues to be an unacceptable shortage of capital available for emerging life sciences companies in Ontario. The announcement of Canada's Venture Capital and Private Equity Association, CVCA, that venture capital investment in 2009 is the lowest in 13 years, and that from a regional perspective, 2009 saw a significant shift of the regional ordering in favour of Quebec relative to Ontario, underlies how critical this issue is to our sector. The CVCA announcement noted that the Quebec venture capital market has benefited from concerted efforts by the Quebec provincial government, institutional investors and an ongoing robust retail environment.

Second, the government has an incredibly difficult challenge managing health-care-related expenditures in the face of unprecedented demands. However, many observers suggest that many of these expenditures should be seen as investments in the health and well-being of our citizens, and that with the right policy environment we can encourage greater investment by the larger drug and device companies sector in investments in Ontario, resulting in rewarding jobs and economic benefit.

In that regard, LSO is concerned with the financial incentive being provided to generic drug manufacturers to challenge the validity of patents—to break patents—held by innovative drug companies that was included in recent reforms to regulations to the Ontario Drug Benefits Act. The incentive to break patents is neither consistent with the government's strong commitment to encourage innovation nor with its stated objective to promote and encourage a strong and vibrant innovative drug sector in Ontario, most recently documented in the life sciences commercialization strategy document I've mentioned.

We're very grateful for the opportunity to appear before you this afternoon. We at LSO are very optimistic about the future prospects for Ontario. That being said, there are some very important policy challenges and opportunities that need to be addressed, and we look forward to working with the members of this committee, the government and the other political parties in defining and advancing important public policy initiatives in the best interests of all the residents of Ontario. Thanks.

The Chair (Mr. Pat Hoy): Thank you. This round of questioning will go to the government. Mr. Sousa.

Mr. Charles Sousa: Thank you very much for being here, and thank you very much for your industry's active initiatives in Ontario. As you well know, it's a priority sector for Ontario and we certainly want to be able to nurture it and build upon the good things that are happening. It has a ripple effect amongst many industries, and I appreciate the comments that you've made, especially the two, one being access to capital, and certainly degree, not just in R and D funding, but certainly commercialization of some of these companies as they come to fruition. It has been a challenge and I appreciate what you've stated.

Can you elaborate a little bit on your activities that you've been having with the ministry and with the government over the last year or so in regard to some of these sectors?

Ms. Janet Lambert: Mainly in the life sciences commercialization strategy and advocating for more funds for innovation with the Ministry of Research and Innovation. This past year has seen a lot of activity in trying to help define and advocate for the different sectors and industries in biotechnology.

Mr. Charles Sousa: And of course it has a great effect on our health care system, in trying to become more effective, more efficient, and enabling us to have a stronger export market of the work your sector is doing. So I applaud you on that activity and appreciate you presenting, and we're certainly listening.

Ms. Janet Lambert: Thank you.

The Chair (Mr. Pat Hoy): And thank you for your submission.

We don't have our other presenters here. We'll recess until one of them should arrive.

The committee recessed from 1455 to 1516.

ONTARIO PROFESSIONAL PLANNERS INSTITUTE

The Chair (Mr. Pat Hoy): The committee will come to order once again, and I will call on the Ontario Professional Planners Institute to come forward, please.

Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. If you'd just state your name for our recording Hansard, then you can begin.

Ms. Marilyn Radman: I will. Thank you, Mr. Chair, members of the standing committee. My name is Marilyn Radman and I'm the director of professional practice and development with the Ontario Professional Planners Institute. This is an elected and volunteer position. I'm also the manager of development planning for Niagara Region Public Works. With me is Brian Brophey, who's also the manager of professional standards with OPPI. Thank you for inviting me to speak to you today.

I appear on behalf of OPPI regarding the proposed change in the definition of the practice of professional engineering. I'd like to refer you to page 40 of the official version of Bill 68. This is the proposed new definition, with the words bolded that have been added to the current definition. In particular, I'd like to draw your attention to the word "planning": "any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising that requires the application of engineering principles and concerns the safeguarding of life, health, property, economic interests, the public welfare or the environment, or the managing of any such act." OPPI does not intend to oppose the proposed change, but to put it into context for you from our point of view.

Let me begin by giving you some background information. Established in 1986, OPPI is the recognized voice of the province's planning profession and provides vision and leadership on key planning issues. OPPI's more than 3,000 members are employed by governments, private industry, agents and academic institutions. Planners work in a wide variety of fields, including urban and rural community development, urban design, the environment, transportation, health and social services, housing and economic development.

Planning has been a recognized distinguished profession for almost a century. The Canadian Institute of Planners, CIP, was first founded in 1919. In 1986, four Ontario affiliates of CIP merged to form OPPI. In 1994, the Ontario government passed a private bill that granted title protection to members of OPPI as registered professional planners: RPP.

OPPI administers a rigorous certification process by which individuals become full members. There are educational and experiential requirements as well as a final certifying examination in professionalism and ethics. OPPI also accredits the degrees offered by Ontario universities that are considered recognized planning degrees for certification purposes. Ryerson, York, Queen's, Waterloo, Guelph and Toronto currently have accredited planning degrees. In fact, OPPI, CIP and the other provincial planning affiliates are currently enhancing and improving that certification and accreditation process, and moving to centralize and standardize it, as have, for example, many other regulated health professions.

OPPI encourages continuous professional learning, CPL, by its members, and its professional practice and development committee is considering making CPL mandatory for its members. In fact, OPPI, on an ongoing basis, commissions the development of courses which its members have identified as a need.

Members of OPPI are subject to a professional code of practice. Complaints may be filed against members who are alleged to have breached the code. The disciplinary process that is engaged then includes an investigation, possible mediation and may result in a full hearing under formal rules of proceeding. If it is determined that a member has breached the code, a wide range of penalties may be imposed on the member, up to and including his or her removal from the registry of the institute. In effect, OPPI is more than a professional association; it operates as a quasi-self-regulatory body.

OPPI has begun consultations with its members and other stakeholders, exploring the possibility of full self-regulation for the planning profession. We believe that it would be in the best interests of the public of Ontario if the planning profession were self-regulated—similar, for instance, to the engineering profession. In due course, OPPI will consult with the relevant ministries of the provincial government and request that public legislation be passed to accomplish this.

Of course, one of the important goals of OPPI's consultations and deliberations is to further define and describe the scope of practice of professional planning. In the 1986 letters patent issued to OPPI by the Ministry of Consumer and Commercial Relations, and in the 1994 private act passed by the Ontario Legislature, planning is referred to as "the scientific, aesthetic and orderly disposition of land, resources, facilities and services, with a

view to securing physical, economic and social efficiency, a sound environment, health and well-being."

In their day-to-day work, many professional planners interact and work with engineers, architects, lawyers, landscape architects and other professionals. This collaboration has served Ontario society well, and OPPI is not aware of any problems or complaints that suggest that this division of labour is not working.

Now I'd like to return to the key matter. Obviously, planning, like managing, is a fairly generic word, as it is used in the proposed new definition of the practice of professional engineering. We note that the word "planning" is used only in connection with the other activities that have traditionally been recognized as the practice of professional engineering.

We appear before you to assert our understanding that the proposed new definition is not intended to, and will not, expand the engineering scope of practice. Moreover, the new definition will not have the effect of requiring professional planners to acquire a licence or permission from Professional Engineers Ontario or any other regulator in order to practise professional planning as they always have.

We understand from PEO and our own research that several other provinces have already adopted the proposed new definition—for instance, Saskatchewan, the Northwest Territories, Nunavut and Manitoba. We've not heard from our professional planning colleagues in those jurisdictions that there has been any change or reduction in the activities that they are able to undertake. We take this fact to confirm our view that the new definition of engineering does not involve any erosion of the scope of practice of professional planners. Under the proposed new definition, professional planners will continue to practise as they currently do, without being licensed under the Professional Engineers Act.

In summary, I have five key messages:

(1) OPPI has existed since 1986 and, since 1994, has had title protection for RPP under private provincial legislation;

(2) That private legislation defines the practice of professional planning and makes OPPI a quasi-regulator of its members;

(3) OPPI does not oppose the proposed new definition of the practice of professional engineering as long as it is not intended to capture and does not capture any activities that OPPI members undertake in the normal course of their profession. We believe that this is not the intention or the effect of the change;

(4) If OPPI members were restricted from any of their normal activities, there would be serious negative repercussions for the public and the land use system and tribunals in Ontario;

(5) Finally, we want to make sure to protect the scope of practice of Ontario Professional Planners Institute members at this time because we have embarked on an initiative to explore the possibility of a full public act of self-regulation.

Thank you for your attention, and we'd be more than pleased to answer any questions that you might have.

The Chair (Mr. Pat Hoy): Thank you very much, and the questioning will go to the official opposition. Ms. Munro?

Mrs. Julia Munro: Yes, thank you very much for coming here today and providing us with this material. I wanted to know, when you were explaining the scope of practice concept here, have you had conversations with the ministry before now in terms of giving them an indication of where you wish to go with the scope of practice for the planners?

Ms. Marilyn Radman: With respect to full self-regulation?

Mrs. Julia Munro: Yes.

Ms. Marilyn Radman: Can I ask that Brian Brophey, our manager, join us?

Mrs. Julia Munro: Certainly. If you come up, then you can be in Hansard.

Mr. Brian Brophey: So far, our official conversations have been with stakeholders, regulators and professional associations in allied industries, so although we've had informal conversations with government personnel, we haven't approached the ministry yet.

Mrs. Julia Munro: Okay, because I just thought from the way that this was presented that you would want this to be kind of a parallel process. Is that fair to say?

Ms. Marilyn Radman: I believe that we're not quite in that position yet to move forward. We have had a lot of consultation with our own members. We have spoken, as Brian mentioned, to other stakeholders, and our next step is really to start approaching the various ministries that have a stake in the work that we do. At that point, then, we would be coming forward. We do need to confirm this with our membership first, as always.

Mrs. Julia Munro: Of course. I understand. I guess my other question, then, would sort of follow: Am I correct in understanding that your concern about the definitions of professional engineering in this section would tend, then, in this context, to overlap with what you do? Is that a fair way of describing it?

Ms. Marilyn Radman: Yes, it is. In our professions there is overlap, and we recognize that. What we wanted to ensure was that, in recognizing the word "planning" in their definition, it didn't mean that planners would then have to get an engineering degree and become a member of Professional Engineers Ontario to practise planning.

Mrs. Julia Munro: Right, right. At this point, are there any sort of messages, subtle or otherwise, that you're getting that this would not be the way in which this would be interpreted?

Ms. Marilyn Radman: We have spoken with Professional Engineers Ontario and they've asked us to support their work here. We've had that discussion. They have not indicated that there would be any repercussions that way, which is why we're feeling fairly comfortable with this. But again, there is an onus on us as a representative of our membership to ensure that this message is clear.

1530

Mrs. Julia Munro: And I think that's a very, very important statement that you've made, to be able to bring it to our attention that there is this potential overlap. I think it's really important on behalf of the membership that you've been able to come today and clarify for us the concern that you have. I don't have any other particular question other than to be sure I understand it and be sure that, obviously, you're talking to all the right people to make sure that everyone else understands your position.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

WINE COUNCIL OF ONTARIO

The Chair (Mr. Pat Hoy): Now I call on the Wine Council of Ontario to come forward, please. Good afternoon. You have 10 minutes for your presentation. There could be up to five minutes of questioning following that. If you'd just simply state your name for Hansard, then you can begin.

Ms. Hillary Dawson: Hillary Dawson; I'm the president of the Wine Council of Ontario.

Thank you very much, Mr. Chair, for allowing me to come in and present to you today. As the committee members may know, the Wine Council is made up of over 70 estate wineries from across Ontario's viticultural regions. Our members make internationally recognized VQA wines and strive to compete day to day with the best wines the world has to offer. I'm pleased to report that on that front, we're very successful.

As the committee may also know, the wine business in Ontario is very regulated, which often makes it challenging for our businesses to be nimble and competitive. It's for this reason that we're eager to support Bill 68, because we feel that the changes contained within it will help the government itself and its agency help change our industry and its regulatory framework for the better.

In Ontario, my members are challenged every day by our commodity marketing system. Unlike any other region in the world, our grape supply is managed through regulated marketing, one that allows for the pricing of grapes through a quasi-collective bargaining process between growers as a whole and processors as a whole. No other wine-producing region prices grapes this way. It's also a system of commodity management that has proven to be less than modern. Established over 60 years ago, it was set at a time when there was little to no vertical integration and no real diversity of offering in the commodity that we use, grapes for wine.

We see similar challenges every day in other food and beverage processing businesses here in Ontario: faced with international competition on a day-to-day basis, yet unable to recognize the potential of our business because our regulated systems tend to be outdated and inflexible. Vertical integration has become the trend, so that processors can have quality within their control.

We have also watched the Farm Products Marketing Commission struggle with its efforts to modernize these marketing systems because of an impractical system that allows single individuals to hold up progress for an entire industry. One can only look at the struggles to modernize the marketing of hogs in this province, two years of unnecessary delays that cost jobs and a competitive position for Ontario's pork processing sector.

I believe that the government has recognized this flaw in the system when I look at the proposed changes to the Ministry of Agriculture, Food and Rural Affairs Act contained in this bill. These changes empower the Ontario Farm Products Marketing Commission, and this empowerment is long overdue. The Farm Products Marketing Commission is an agency of the ministry that is accountable for the conduct and impact of Ontario's regulated marketing system. It has the authority to use itself or to delegate or authorize the marketing boards to use the powers available under the act.

The commission has the authority to limit or revoke any of the powers or authorities given to marketing boards at any time, but more importantly can also consider ways to stimulate, increase and improve the producing or marketing of farm products.

In day-to-day practice, the commission is the central figure in Ontario's regulated marketing system. It facilitates sector stakeholder discussions to effect change to individual commodity marketing systems, and it is the supervisor of these marketing boards.

The commission is responsible for policy development and any regulation or legislation changes related to regulated marketing. I'm pleased to report that they maintain a very close working relationship with marketing boards and food industry representatives like ourselves. It is responsible for analyzing and presenting those sectors' views on regulated marketing issues to the minister within the Ministry of Agriculture and Food and across government.

The commission is also charged with examining each commodity group's marketing plan. As mentioned previously, most marketing boards were established decades ago under different economic and trade environments. Over the last several years, many boards have faced considerable pressure for changes to their marketing plans from some producers and the customers they supply. Therefore, many boards are dealing with how they meet the needs of a less homogeneous group of producer members as well as food industry customers who are competing in a global environment.

When our industry meets at the commission, we cannot help but notice that the commission's vision is one of "dynamic, competitive agri-food sectors," and its mission statement states that it will "lead, supervise and direct Ontario's regulated marketing system to effectively adapt to change." Marketing system adjustments can be initiated by any stakeholder and the commission will ensure that the affected industry participants discuss the issue and pursue a resolution that's acceptable to industry participants. In the case of our industry, that's precisely what they do and over time have moved to motivate change and innovation.

The challenge in driving this change and innovation is the role that a single producer can play in slowing and restricting industry modernization. Right now, when the commission moves to implement change that is more reflective of modern commerce, a single appellant can hold up a change that is designed to benefit an entire industry. The risk is often very inhibiting and restricts the ability of the commission to fulfill its vision of making our agri-food sector competitive in a global environment.

The government has proposed a very simple yet critical change from our perspective. It will amend the Ministry of Agriculture, Food and Rural Affairs Act to assure that any commission directives that are general in application cannot be appealed to the tribunal. As long as these general directives are broad and not limited in application to a certain person or group of persons, or to a certain dispute or incident, the commission will be empowered to drive change in a timely manner without fear of lengthy, costly and sometimes frivolous interventions designed to hinder progress. There would still be appeal to the minister on the broader industry changes, a direct appeal that is more appropriate when these changes to industry have broader public policy purpose and therefore could potentially merit this kind of a review.

In the winery business, it's unclear to us whether the Ontario Farm Products Marketing Commission intends to implement some of the broader industry changes that we've long advocated for. Quite frankly, it could be quite the opposite. That's not why I'm here on behalf of the Wine Council today. I'm here because from a process perspective it's critical that if the province wants to continue to have a regulated marketing environment, its arm's-length agency should be able to act to fulfill its mandate for the greater good of the agri-food sector and the province without fear of interference from a singular processor or a singular producer.

As I've mentioned before, no other wine region in the world is confronted with the regulatory system and set of relationships that Ontario's wineries have with their growing community. In our view, it's a step forward to empower its agency to be able to allow our businesses, both on the grower side and on the processor side, to be more nimble and competitive. The proposed change in Bill 68 will accomplish that and I hope that all committee members will be supporting this change.

Some of you may be wondering why this is important for our economy and I leave you with this reminder. In Ontario, VQA wines play a role in the broader food and beverage processing industry. Our wineries are in some cases the largest industrial taxpayers in their communities. We've invested our capital in rural Ontario and we're significant drivers of tourism in the province. We function in the most competitive wine market in the world, where our retailer is bringing in the highest-value and highest-quality products from across the planet here to consumers. We need our industry to be modern, nimble and profitable. Any regulation that makes that easier or has the potential to make it easier is one that will be supported by our members.

Thank you very much and I look forward to answering your questions.

The Chair (Mr. Pat Hoy): Thank you for the presentation. We now move to the NDP and our wine expert, Mr. Prue.

Mr. Michael Prue: Thank you very much for that introduction, Mr. Chair. I had an opportunity over the past week to visit some of the wineries in Essex county and was very impressed with the quality and the price. Just to let your members know, that was my first tour of that wine region.

1540

When I talked to the owners of those wineries—and I think I talked to almost all of them—their complaint was not about this bill or the wines that are being produced or how they're being sold, it was the difficulty in getting their wines to market. Because the wineries were small, there was very limited access to the LCBO. It was suggested to me that even if they could sell the wines in a local LCBO—maybe not across the whole system, but locally in the stores around—it would help in the marketing of their wines and in making them better known. Is that something that the Wine Council would—

Ms. Hillary Dawson: Yes, and in fact it is something that, through our work with the LCBO, they can do now. It's actually a new program at the LCBO, where you can go in one, two, three, four stores just in your area, if that's what you want to do. For those wineries, that's good news. I'd be happy to talk to any of them about the opportunity. In partnership with the LCBO, we've already done that.

Mr. Michael Prue: But although they agreed with that, they also said that the markup that they have to pay the LCBO—there's very little money made vis-à-vis selling it in their own facility.

Ms. Hillary Dawson: The two markup structures are different. We are partners with the government of Ontario on a strategy to support their sales into the LCBO channel. I think that will make the decision to sell at the LCBO a lot easier for them, when they think through the economics.

Not every winery is able to sell all of their wine through their cellar door, so we continually encourage them to pursue all opportunities. If it's just one LCBO store in their community, we hope that they'll take advantage of that.

Mr. Michael Prue: You have been quite clear that the provisions of this bill are to your liking. Is there anything that you advocated that was not put in the bill?

Ms. Hillary Dawson: No. Certainly, in terms of the Farm Products Marketing Commission, we think this is the next important step. We are always in discussion with the government about other elements of reducing red tape and making our businesses more nimble. We're hopeful that those will continue to come forward as part of the Open for Business initiative.

Mr. Michael Prue: There was some controversy last year around attempts to try to get fruit wines more readily available. Is your Wine Council involved with the fruit wineries at all?

Ms. Hillary Dawson: No. We represent manufacturers of grape wine. I'm certainly aware of their challenges, and they are challenges that every winery faces when trying to get in front of the LCBO. They buy a lot based on consumer preference, so a lot of the onus is on the wineries and their respective associations to bring those wines to consumers' attention so that they'll demand more and the wines will sell through when they get to market.

Mr. Michael Prue: I'm asking questions that are all really—we also have the VQA labelling and then you have "cellared in Canada." I understand why that was done initially, but I'm wondering if we should insist that cellared-in-Canada wines have 51% Ontario grape product. The reason I'm asking that is, there are some grape growers who find from time to time that they cannot sell all of their wine, while we're importing primarily Chilean, I think, wines in bulk to blend. Does this cause any problems?

Ms. Hillary Dawson: A couple of things: Blending wines, as you would know as someone involved in wine, is a practice around the world. In every wine-making region, they all have their own blended wine products, so—

Mr. Michael Prue: Right, but hardly any of them bring them in from another country—well, no, in the EU, they do.

Ms. Hillary Dawson: They most certainly do. If you go to New Zealand, you can often be drinking a wine of New Zealand and Australian origin at the same time.

That being said, the issue of labelling is a federal one. I know the CFIA is reviewing it right now to make sure that the term is appropriate. We've recommended another term, which this province has supported, of "blended from international and Canadian wines," which is a better descriptor of what those wines are.

We're working with the LCBO to make sure they're shelved appropriately. They eat about a third of our grape crop, which is good. Not all grapes are appropriate for all wines, whether they're blended or not, so any wholesale change in content—we're mindful that we don't want to make those wines uncompetitive, because it's not as though if they left our shelves, people would just gravitate to VQA wines. These are popular, value-priced wines and we'd rather we owned as much of that market as we could on wines made here in Ontario. I think that's important to remember.

Is 51% the right number? I don't know that. My members primarily don't make those wines. I leave it to CFIA to give us some judgments on that, coming forward.

Mr. Michael Prue: Thank you so much.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

I'd just remind the committee that amendments have to be filed with the clerk by noon on Thursday, August 5. We are adjourned.

The committee adjourned at 1545.

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