

Bill 139, An Act to amend the Employment Standards Act, 2000 in relation to temporary help agencies and certain other matters

Submission to Standing Committee on the Legislative Assembly

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INTRODUCTION

Council of Agencies Serving South Asians (CASSA) facilitates the economic, social, political and cultural empowerment of South Asians by serving as a resource for information, research, mobilization, coordination and leadership on social justice issues affecting our communities. Ontario is home to more than 600,000 people from the South Asian communities. Significant portion of this community is also made up of new immigrants.

As a social justice umbrella organization working with Ontario's diverse South Asian communities, we would like to express our support to Government of Ontario's efforts to improve the employment standards of all workers in Ontario.

Through this brief, CASSA would like to bring to the attention of this committee some of the challenges faced by the workers of South Asian background in Ontario while identifying some of the changes that the proposed legislation must undergo in order for it to be effective in improving the working conditions faced by all workers of Ontario, including those of South Asian origin.

SOUTH ASIAN WORKERS IN ONTARIO

Canada is home to over a million people of South Asian origin and according to Statistics Canada, Ontario is home to more than 61.5% of them. In 2001, South Asians made up 5.3% of Ontario's population¹. As one of the fastest growing communities and that which is made up of a large immigrant population, this is also community that faces many challenges in integrating in Ontario.

For instance, while Canadian adults of South Asian origin are considerably more likely than the rest of the population to have a university degree - 25% of Canadians of South Asian origin aged 15 and over had either a bachelor's or post-graduate degree, compared with 15% in the overall adult population – they, however, earn significantly less than the national average. In 2000, the average income from all sources for Canadians of South Asian origin aged 15 and over was just under \$26,000, compared with almost \$30,000 for all Canadian adults (Statistics Canada).

Recent report by the Children's Aid Society of Toronto highlights the poverty amongst children from South Asian families in the GTA. According to the report, one child in four from South Asian communities, along with Aboriginal, Caribbean, South and Central American groups, lived in poverty².

¹ Statistics Canada, "The South Asian Community in Canada" (2001)
<http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007006-eng.htm#2>

² Greater Trouble in Greater Toronto: Child Poverty in the GTA, Children's Aid Society of Toronto, Toronto, (December 2008)

BILL 139 AND SOUTH ASIAN COMMUNITIES

Over the past fifteen years, CASSA has collected abundant information on the issue of poverty amongst South Asians. As part of our dialogue with the members of the South Asian communities, we held media talk-shows, town halls, and public discussions to identify some of the challenges faced by members of the South Asian communities in accessing equitable employment opportunities in the GTA. During these discussions, the issue of temporary agencies and their exploitation of a vulnerable workforce, lack of benefits, and a lack of proper information about work being hired-for featured prominently. It is with this lens that we studied the proposed Bill 139.

We are pleased that the Government has taken leadership in addressing the challenges faced by those working through temporary agencies. It is to be noted that the people who work through temporary help agencies will work weeks, months, and sometimes years, alongside co-workers doing the same job but for 40% less pay,³ fewer or no benefits, job and income insecurity and little protection against employment standards violations. As an organization, we are deeply concerned about the racialization of poverty in Ontario. We are extending our fullest support to this bill in the hope that such measures would promote equitable access to employment and in promoting workers' rights.

We commend the enactment of regulation 432/08 which eliminates the public holiday exemption for "elect to work" employees effective January 2, 2009.

CASSA invites all our legislators to endorse the bill as CASSA understands that the Bill 139 will:

- Eliminate "elect to work" exemptions for public holiday and termination and severance entitlements
- Reduce direct fees that can be charged to agency workers
- Require that legal and operating names of the agency and contact information for the agency, client company, and work assignments be provided to employees
- Require agencies to provide all employees with a copy of the Ministry of Labour developed information, in an employee's language if available, about the employment standards rights and responsibilities of temporary help agencies, client companies and agency workers
- Extend some responsibility such as anti-reprisal protection, under the Employment Standards Act, to the client company and the agency.
- Reduce barriers to permanent jobs by removing some of the barriers that those temporary agency workers on longer-term assignments face when trying to be hired directly by a client company by prohibiting an agency from restricting workers from being hired directly by the client company

³ Statistics Canada, "Earnings of Temporary Versus Permanent Employees" **The Daily** (Wed., January 26, 2005).

PROPOSED AMENDMENTS TO BILL 139

CASSA acknowledges the leadership Workers Action Centre (WAC) has provided in advocating for improved employment standards for all workers in Ontario and endorses the Workers Action Centre's recommended amendments.

1. Bill 139 would construct the agency as the employer of the assignment worker and that it also restricts liability of the client company for the person assigned to work on a temporary basis to issues of reprisals.

The narrow scope of Bill 139 would still allow temporary staffing and employment agencies to charge workers' fees for job placement.

We urge that the committee considers favorably the WAC proposed amendments to:

*Change name of new Part XVIII.1 from Temporary Help Agencies to **Employment Agencies**
Change 74.1 (1) Interpretation for "temporary help agency" to read:*

"Employment agency" means the business of providing services for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them or that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer.

Reflect employment agency interpretation throughout Act.

2. Section 74.2 excludes a worker who is an "assignment employee" assigned to provide services under contract with the Community Care Access Centre (CCAC) or who is doing work governed by a contract with the CCAC. Because we strongly feel that subcontracted homecare workers should be getting the same minimum termination and severance benefits that other workers get and that they should not have to wait three years to get termination and severance entitlements we urge you to:

Delete Section 74.2 (exemption of home care agency workers under CCAC contract) in its entirety

3. We recognize and support the government's proposal to prevent agencies from restricting a client from directly hiring a worker that was on assignment at the company through this legislation but we are concerned that Bill 139, as it stands now, would allow agencies to apply restrictions on companies' directly hiring assignment workers within six months of starting an assignment. We also believe that the agencies be not allowed to charge the client companies additional fees to compensate for future loss of earnings from a worker. These prohibitive charges would discourage employers from offering employment to workers and leaves them in a vulnerable situation. We therefore urge that the government removes the six month exception to prohibitions on barriers to employment. **Therefore we propose the amendment to:**

Delete section 74.8 (2) and 74.8 (3)

4. In practical terms, the “elect to work” exemption in the ESA is used to deny termination and severance to mainly low-waged workers in temporary, contract and irregular forms of work. Therefore we believe that removing the “elect to work” exemption is the most effective way of bringing fairness and protection of termination and severance benefits for temporary agency workers and so propose that:

The government should proceed immediately with a regulation to remove the “elect to work” exemption for termination and severance (O.Reg. 288/01 2.(1) 10).

The legislation sets up additional barriers and promotes a two-tiered system of rights. The current standards for termination and severance pay in the *Employment Standards Act* should apply to agency workers, rather than creating a two-tiered system where agency workers would have to wait more than twice as long to be eligible for termination. The Bill would also disentitle agency workers from termination and severance if they are sick or taking other statutory leaves. **Amend Bill 139 to include temp agency workers under the current termination and severance pay requirements in the ESA.**

Delete Termination and Severance Section 74.11⁴

5. The information requirements in the proposed legislation’s Section 74.5 and 74.6 addresses the reality of the changing labour market by requiring that information about the agency, client company and assignment be provided to the temporary agency worker. However, to fully address the realities that temp agency workers face, workers need to know the expected duration of the assignment. Therefore we propose the following amendments:

Add new paragraphs under section 74.6(1):

7. The start date of the assignment and expected end date of assignment.

Insert new subsection:

The client company shall date and sign the information document provided under 74.6(1) and provide a copy of this form to the assignment worker and agency.

We commend the Government of Ontario in taking the initiative to ensure that rights of all workers are protected and we call upon all our legislators to give utmost importance to the proposed amendments to ensure that the bill truly and effectively addresses all the issues pertaining to the workers employed through employment agencies.

We sincerely thank you for giving us this opportunity to present our concerns and suggestions.

⁴ with the exception of subsection 74.11(5) which deals with posting requirements. Subsection 5 should remain in Bill 139 because it requires employers to provide notice to each employee, regardless of where they are assigned or on layoff, in the event of the agency terminating 50 or more employees within a four-week period.