



Association of Canadian Search,  
Employment and Staffing Services

Association Nationale des Entreprises en  
Recrutement et Placement de Personnel

October 30, 2014

Grant Crack, MPP  
Chair/Président  
Standing Committee on General Government  
Room 1405  
Whitney Block  
Queen's Park, Toronto ON  
M7A 1A2

Dear Mr. Crack

**RE: Submissions of the Association of Canadian Search, Employment & Staffing Services on Schedule 5 to “Bill 18, *An Act to amend various statutes with respect to employment and labour*”.**

### **Introduction**

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business. ACSESS members account for over 80% of operating revenues and premiums paid in the province.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

### **Analysis of Proposal**

We are writing to express our serious concerns with the proposed amendments to the *Workplace Safety and Insurance Act* set out in Schedule 5 to “Bill 18, *An Act to amend various statutes with respect to employment and labour*”. ACSESS takes no position with respect to the balance of the proposed legislation.

Under the current law, all Schedule 1 employers incur the WSIB premium and experience rating surcharge costs of the employees that they hire. Bill 18 proposes to carve out an exception to this established principle by transferring the premium and accident costs of injuries to workers employed by staffing agencies to the WSIB account of the staffing agency's client. It is the view of ACSESS that the Bill 18 amendments will have a devastating impact on the Ontario workplace safety and insurance system for the reasons set out below. ACSESS proposes that Schedule 5 of Bill 18 be deleted in its entirety.<sup>1</sup>

### ***1. Bill 18 Will Result Cause a Significant Financial Burden on the Underfunded Workplace Safety and Insurance System***

Consulting Actuary J. Edward Nixon has reviewed the amendments proposed by Bill 18.<sup>2</sup> Mr. Nixon has been closely involved with the financial and actuarial aspects of the workplace safety and insurance system in Ontario for 30 years. He has concluded that the proposed changes will result in staffing agencies receiving significant premium refunds as they will never incur any accident costs.

One of the hidden traps of the proposed amendment is that clients of staffing agencies are often smaller employers that pay premium rates and accident surcharges which are significantly lower than those paid by staffing agencies. As a practical matter, this means that the WSIB will lose significant revenues when the costs of an accident are assessed to the account of an employer as proposed by Bill 18.

It is clear that the proposed reforms will have a devastating financial impact on the already strained workplace safety and insurance system. ACSESS agrees with Mr. Nixon's professional opinion that the proposed changes are "*...are technically incorrect and irrational.*"

### ***2. Bill 18 Undermines Meredith "No Fault" Principle***

ACSESS asks the Committee to remember that the Province of Ontario recently celebrated the one hundredth anniversary of the workers' compensation system developed in this province by W.R. Meredith and imitated all over the world.

The cornerstone of Mr. Meredith's system is that workers are entitled to benefits **with no assessment of fault** and the accident costs are assessed to the worker's employer through an insurance system. Bill 18

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<sup>1</sup> The proposed ACSESS amendment to Bill 18 is attached at Appendix A

<sup>2</sup> Mr. Nixon's analysis is attached at Appendix B

undermines this century old principle by introducing an element of fault to a system which is designed to compensate workers without consideration of that issue.

The recent Bill 160 reforms to the *Occupational Health and Safety Act* have already shifted responsibility for accident prevention to the Ministry of Labour. It makes no legal sense to introduce a “fault” provision to a “no fault” system where an entirely separate legal system and enforcement body exists to protect worker safety and punish those employers and individuals who violate workplace safety laws.

### ***3. Client Employers are Already Legally Liable for Accidents to Staffing Agency Employees***

The issue of whether an employer or any workplace participant is “at fault” and should be punished for a workplace accident is dealt with in prosecutions under the *Occupational Health and Safety Act* (“OHSA”). Under the OHSA, both the staffing agency and the client employer are responsible legally for the safety of agency workers. This means that the Ministry of Labour can bring charges in Court against both the agency and the client employer if a workplace accident or safety violation occurs.

The maximum fine under the OHSA for a safety violation is \$500,000 per count and/or up to one year in jail per count. Further, both the staffing agency and the client employer can be charged under the *Criminal Code* for the most serious safety violations.

It should be noted that Ontario Courts have repeatedly and consistently shown that they take workplace safety very seriously. One Ontario Judge recently stated that business owners in a sector with vulnerable workers **should expect jail terms to become the “norm”** in workplace fatality cases.<sup>3</sup> The Ontario Court of Appeal recently commented that it **would be appropriate in certain cases for a fine to bankrupt a company** which has been convicted of a criminal offence related to workplace safety.<sup>4</sup>

One of the stated purposes of the Bill 18 amendments is to address a policy concern that employers are simply assigning the most dangerous work to agency employees. ACSESS has been advised by expert legal counsel that **a deliberate scheme to assign dangerous work to poorly trained staffing agency workers would likely be treated as criminal negligence** by an Ontario Court.

This means that any client employer who engaged in such activities would face the potential of **unlimited fines and up to life in prison** for any individuals involved. The OHSA and the *Criminal Code* already equip Ministry of Labour and the police with powerful tools to crack down on those employers who are endangering worker safety.

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<sup>3</sup> See *R. v. Roofing Medics Ltd.*, 2013 ONCJ 646

<sup>4</sup> See *R. v. Metron Construction Corporation*, 2013 ONCA 541

#### ***4. ACSESS Plays a Pro-Active Role in OHS Compliance***

It appears that the reforms are based on the false premise that staffing agencies are not actively involved with attempting to reduce workplace accidents and enhance the safety of their employees. While it is acknowledged that a very small number of agencies engage in practices that ought to be subject to the harsh legal penalties described above, ACSESS members have worked closely with OHS and Workers' Compensation agencies across the country to improve worker safety and to reduce accidents.

Specifically, ACSESS has been active in the WSIB safety groups program which encourages sharing of best practices amongst employers of all sizes in similar industries. Further, ACSESS has been actively involved with senior representatives of WSIB in shaping policy (*Framework for Compliance Initiative*) which improves the performance of the staffing industry as a whole.

#### ***5. Bill 18 does not Enhance Protection for Staffing Agency Employees***

The stated purpose of Bill 18 is to broaden safety protections for staffing agency workers. It is our view that the proposed reforms **do not achieve this important goal** and in fact **might increase the dangers that workers face**.

The stated purpose of the proposed reforms is to use the WSIB experience rating system to encourage safety compliance by client employers. However, this approach does not stand up to scrutiny when one examines how accident costs are assessed and considered in light of the reality that many client employers will not be subject to significantly increased workers' compensation costs as a result of these reforms. In fact, **accident costs will be the most minimal** for smaller client employers who were presumably **one of the key enforcement targets**.

Further, staffing agency employees will generally not have re-employment rights under section 41 of the *Workplace Safety and Insurance Act* with the client they are working for at the time of the accident (they need to have one year of continuous services for re-employment rights to apply). Bill 18 creates the bizarre situation of a client employer being responsible for the accident costs while at the same time not having any obligation under the *Workplace Safety and Insurance Act* to give the injured worker a job.



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I wish to thank you for the opportunity to make these submissions and would be happy to answer any questions any member of the committee may have about this important topic.

Yours Very Truly,

Mary McIninch, B.A, LL.B (Membre du Barreau du Québec)  
Director of Government Relations/Directrice des Affaires Publiques  
Association of Canadian Search, Employment and Staffing Services  
Association Nationale des Entreprises en Recrutement et Placement de Personnel