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AMAPCEO
ONTARIO'S PROFESSIONAL EMPLOYEES

Standing Committee on Finance and Economic Affairs
C/O Eric Rennie, Clerk of the Committee
Room 1405, Whitney Block
Queen's Park, Toronto, Ontario M7A 1A2
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By e-mail only

July 21, 2017

RE: Submission to the Standing Committee on Finance and Economic Affairs regarding Bill 148: Fair Workplaces, Better Jobs Act, 2017

Dear Committee Members:

I am writing to you on behalf of 13,500 AMAPCEO-represented professionals regarding Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. Our union is in support of this long-overdue effort to contend with Ontario's ever-changing workplace realities. These issues are of importance not only to AMAPCEO's membership of professional public sector employees, but to workers across the province – far too many of whom are engaged in precarious employment and face enormous barriers to obtaining union representation and fair working conditions.

While Bill 148 contains many positive amendments to the *Employment Standards Act* ("the ESA") and *Ontario Labour Relations Act* ("the OLRA"), this submission will focus on several areas that remain of concern to AMAPCEO. We wish to highlight the comments of the Workers' Action Centre, Parkdale Community Legal Services, the Ontario Federation of Labour and Migrant Workers Alliance for Change. These organizations have provided detailed reviews of Bill 148 and have made recommendations as part of the Fight for $15 and Fairness. AMAPCEO fully supports and endorses those submissions.

Eliminating the Crown Exemption in the ESA

At present, Crown employees are excluded from much of the ESA's protection by section 3(4) of the Act. This means that the majority of AMAPCEO's membership has no guarantee – beyond what is negotiated with employers - to common standards including the minimum wage, payment for vacations and public holidays, overtime pay, or standard hours of work and rest breaks. Any policy justification for this exclusion, if there ever was one, has been long ago lost to the sands of time. And in our experience, these exclusions have exposed Crown employees to unfairness.

Bill 148 contains two amendments that would remedy this issue: a new section 3.1 which makes clear that the Act binds the Crown; and the deletion of section 3(4),

which is the provision which exempts the Crown from portions of the ESA. We wholeheartedly recommend the acceptance of these two amendments.

We are concerned, however, with Bill 148's preservation of an exemption to Section 4 of the Act for the Crown, Crown agencies, or authorities, boards, commissions or corporations who are appointed by the Crown. Section 4 provides employees with access to joint and several liability in situations where there may be more than one entity with employer status. This includes employer-employee relationships that may evolve over time. In the public sector, these arrangements are relatively commonplace, such as when a component of a ministry's work is transferred to an arms-length Crown agency, or in certain kinds of public-private partnerships.

It is unclear why the Crown would require relief from this liability. It would be inappropriate for any public employer to undertake an arrangement of its affairs that would have the effect, whether intentionally or not, of depriving employees of rights and entitlements accrued under the ESA. Crown employers should be demonstrating leadership and accountability in ensuring that all relevant minimum standards are met and employees are treated fairly. We recommend that this amendment be rescinded.

Ending Professional Exclusions in the OLRA

AMAPCEO is disappointed that Bill 148 does not address the unfair and outdated exclusions from OLRA coverage for certain types of workers, including domestic workers, agricultural and horticultural workers, and those working in certain regulated professions. At present, the OLRA deprives many employees in Ontario of the right to join a union. We understand that the government has committed to undertaking independent reviews of each of these exclusions. However, over the last 15 years, the Supreme Court of Canada has made it increasingly clear that the ability of workers to engage in collective bargaining is a component of the fundamental freedoms protected by the *Canadian Charter of Rights and Freedoms*. These rights should no longer be deferred or made subservient to other policy interests. We strongly recommend the immediate repeal of the occupational exclusions in the OLRA. This can be accomplished by deleting section 1(3)(a) and section 3(a)(b), (b. 1) and (c) of the Act.

Facilitating Collective Bargaining for Managerial Employees

Beyond those exclusions which are premised on employment in a specific occupation, the OLRA also prevents employees who work in a managerial or labour relations capacity from belonging to a union. Unfortunately, Bill 148 has left these exclusions untouched. In other forums, we have previously recommended amendments to the Act designed to better facilitate access to collective bargaining for employees, notwithstanding their exercise of managerial or labour relations functions. In our view, the historical justifications for this treatment are rooted in outdated conceptions of how collective bargaining operates in the modern workplace. The antiquated presumption that membership in a trade union subverts

the loyalty and integrity of managerial and confidential employees is no longer a sufficient basis upon which to disallow them the exercise of their freedoms of association. We therefore also recommend that section 1(3) of the Act be deleted, and that new amendments be inserted dealing specifically with how managerial and confidential staff may seek to be represented by a bargaining agent.

Sincerely,

Dave Bulmer
President
AMAPCEO