

October 8, 2024

**Submission to the Standing Committee on Finance and
Economic Affairs regarding Bill 190, Working for Workers Act
Five, 2024**



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Introduction

Waterloo Region Community Legal Services is a community legal clinic funded by Legal Aid Ontario to provide free legal information, advice and representation to low income Ontarians. We also engage in public legal education, community outreach and law reform initiatives to support rights for workers and enhance access to justice. Our submissions will primarily focus on the proposed amendment to section 132 of the *Employment Standards Act, 2000* (“ESA”).

Summary Remarks

The proposed amendment in Bill 190 to section 132(a) of the ESA, which would increase the maximum fine issued against an individual who violates the Act is a positive step. However, based on the experiences of workers in Waterloo Region our concern is that it will not be enough to stop employers from violating the ESA. This is either because individuals and corporations do not believe prosecution under section 132 is likely, or even if an individual or employer is prosecuted that the Ministry of Finance will not be able to collect the fine. We recommend developing a regime of licencing employers and requiring a posted security or enabling the Ministry of Labour, Immigration, Training and Skills Development (“MLITSD”) to have enhanced mechanisms to strip non-compliant employers of needed licences to operate a business.

Wage Theft in Waterloo Region

Waterloo Region Community Legal Services has provided employment law services since 2016. Over the past eight years we have observed that low wage workers are particularly vulnerable to wage theft. Wage theft occurs in a variety of forms. Workers may be paid incorrectly, for example not paid vacation pay or public holiday pay, or not paid at all for the hours worked. In our experience newcomers and young workers are most vulnerable to the most egregious wage theft, not receiving any payment for their labour.

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Over the last five years, we have received recurring complaints and requests for assistance regarding one particular employer. Since 2019, Waterloo Region Community Legal Services has supported workers employed by a grocery store called Dutchie's Fresh Market with claims for unpaid wages. We have witnessed an ongoing pattern whereby workers were not paid wages, or when their wages were paid the paycheques had insufficient funds. This meant that workers who were already denied their wages incurred additional bank fees for the bounced cheques. The majority of the workers seeking our assistance with this particular employer were largely newcomers to the country or young workers. Even after we successfully assisted these workers to receive orders for payment from the Ministry of Labour the orders went unpaid. To date, only a few of our clients have received any compensation for the unpaid wages owed to them. The amounts received four years later were nominal in comparison to the total amounts owing.

Our research into this employer showed that the first claim against Dutchie's Fresh Market for unpaid wages was filed with the Ministry in December 2011. This is significant because the grocery store only opened its doors in October 2011. In almost every year after the store opened, workers filed claims against the store for unpaid wages. Finally, in 2023, Dutchie's Fresh Market and the owner, Mr. Michael Renkema, were charged under section 132 of the ESA. The charges relate to 15 counts against Dutchie's Fresh Market for failing to comply with orders to pay and 8 counts against Mr. Michael Renkema for failing to comply with Director orders to pay. The orders to pay stretch over the period of January 2022 to April 2023. We commend the MLITSD for taking this step, as we understand that 90% of employers found to have violated the ESA receive no penalty.¹ However, workers are understandably frustrated as to why it took this long for the MLITSD to act given the longstanding pattern of wage theft and why the wage theft has still not stopped.

¹ "From the Frontlines: An urgent agenda for decent work", Workers' Action Centre, <https://workersactioncentre.org/wp-content/uploads/2022/05/WAC-From-the-Frontlines-web.pdf>, May 2022 citing Leah Vosko et al., *Closing the Enforcement Gap: Improving Employment Standards Protections for People in Precarious Jobs*, Toronto: University of Toronto Press, 2020, 152.

Throughout 2023 and 2024 we continue to receive complaints from Dutchie's Fresh Market workers for unpaid wages. The experiences of these workers demonstrate that despite the possibility of penalties and fines an employer and its owner may receive under section 132 of the ESA, it does not curb violations. Moreover, even the prosecution by the MLITSD and ongoing collection efforts by the Ministry of Finance have not stopped Dutchie's Fresh Market from engaging in wage theft. The current mechanisms are simply not enough to protect workers.

In March 2024, a group of former Dutchie's Fresh Market employees went public and spoke with CTV News Kitchener. The four workers who were interviewed were all recent immigrants from the Ukraine. They begged Mr. Renkema to pay them and he responded that he didn't have the money to pay.² On March 28, 2024, CTV News Kitchener reported Dutchie's Fresh Market and Mr. Michael Renkema cumulatively owed \$188,000 for 23 unpaid orders for violations of the ESA. The Ministry of Finance was reported at that time to be attempting to collect \$469,000.00 for outstanding unpaid orders.³ These amounts are staggering. The unpaid and uncollected funds represent significant and substantial losses which detrimentally impacted the vulnerable workers who need their wages to make ends meet. Sadly, we also know that the workers from Dutchie's Fresh Market are not alone in not receiving outstanding unpaid wages.⁴ It is reasonable for the Dutchie's Fresh Market workers to wonder if they will ever receive any compensation at all. The volume of uncollected funds demonstrate that the current system for enforcing the ESA is not working.

² Heather Senoran, "Former employees claim Kitchener, Ont. grocer hasn't paid them", CTV News Kitchener, <https://kitchener.ctvnews.ca/former-employees-claim-kitchener-ont-grocer-hasn-t-paid-them-1.6808023>, March 14, 2024.

³ Jeff Pickel, "'Enough is enough': Contractor calls out government for inaction of Dutchie's non-payment", <https://kitchener.ctvnews.ca/enough-is-enough-contractor-calls-out-government-for-inaction-of-dutchie-s-non-payment-1.6826528>, CTV News Kitchener, March 28, 2024.

⁴ Nicole Brockbank, "Toronto businessman faces new wage theft claims, still owes \$290K in wages years after conviction", CBC News, <https://www.cbc.ca/news/canada/toronto/toronto-businessman-new-wage-theft-claims-1.7122636> February 26, 2024.

Proposed Amendments to the Employment Standards Act, 2000

Waterloo Region Community Legal Services supports the amendment in Bill 190 to increase the fine for an individual convicted under section 132(a) of the ESA from \$50,000 to \$100,000. However, our concern is that even with the increased fine employers will continue to engage in wage theft, and collection of the fine in addition to unpaid orders may be challenging for the MLITSD and Ministry of Finance.

Recommendations

As stated, despite the ongoing prosecution of Dutchie's Fresh Market and Mr. Renkema under section 132 of the ESA, workers are still filing claims with MLITSD for unpaid wages. The prosecution has not deterred this behaviour. It is our submission that the current regime is not enough to protect workers from continuing to fall victim to employers like Dutchie's Fresh Market. The MLITSD needs to be able to prevent particularly egregious and notoriously non-compliant employers from continuing to employ and steal from vulnerable workers.

The new licensing regime for temporary help agencies and recruiters is a positive tool to ensure that workers claiming unpaid wages against agencies and recruiters will be able to successfully recover compensation. We call on the government to create similar legislation which would require employers to apply for and receive a licence in order to continue or commence operation, as well as the requirement of posting a security of \$25,000.00 to be licenced. In the alternative, we would support a regime which would permit the MLITSD to revoke other types of licences or permits a business or its owner may need to operate, such as a business licence, liquor licence, or driver's licence, when the business or owner is non-compliant. In order for those non-complaint employers to recover their licence, payment for outstanding orders must be made in full and those employers should be required to post and maintain a security deposit. This would be an important mechanism to ensure workers receive payment in full for orders to pay in a

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timely manner. These changes would enhance the ability of the MLITSD and Ministry of Finance to collect on behalf of workers and the province.

The current regime for enforcing the ESA relies heavily on vulnerable workers whose rights have already been violated to make claims. Increased proactive enforcement in workplaces, enhanced mechanisms to stop non-compliant employers, and increased use of fines for employers would shift the burden of enforcement from workers to the MLITSD.

While the proposed changes to the *Employment Standards Act* in Bill 190 reflect positive amendments to the legislation, we do not feel enough is accomplished to protect workers from the violations we regularly encounter in our work. We thank the Standing Committee for the opportunity to make our submissions and share the experiences of workers in Waterloo Region.

All of which is respectfully submitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanna Mullen', with a long horizontal line extending to the right.

Joanna Mullen, Employment Lawyer

